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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 813

ANNIE MARY TIMMONS, *Appellant*,

v.

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION AND DANIEL R. McLEOD, as Attorney General of the State of South Carolina, *Respondent*.

On Appeal From the Supreme Court of South Carolina

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

The appellant, pursuant to United States Supreme Court Rules 13(2) and 15, contends the Supreme Court of the United States has jurisdiction on direct appeal to review the final judgments of the Supreme Court of South Carolina, 28 U.S.C. 1257(2).

OPINION BELOW

The opinion of the Supreme Court of South Carolina, adopts verbatim the order of the trial court. App. A, *infra*, pp. 1a-25a. Order of trial court, App. A, *infra*, p. 3a.

JURISDICTION

The Supreme Court of South Carolina on July 7, 1970 affirmed the order of the Court of Common Pleas for Richland County, which upheld the action of the South Carolina Tricentennial Commission, to take appellant's property under the claim of eminent domain, and this appeal dated July 23, 1970 was from that judgment.

Petitions for rehearing were duly filed and denied on July 22, 1970. 28 U.S.C. 1257 (2).

The Clerk of the South Carolina Supreme Court on August 1, 1970, transmitted the certified record of that Court in this case to this Court.

Appellant filed a second Motion to Stay the remittitur with the Supreme Court of South Carolina, dated Aug. 10, 1970, and for an Order to Stay the enforcement of the judgment; pending the perfection and disposition of this appeal, which likewise was denied by that Court on Aug. 28, 1970. Appellants filed with this Court on Sept. 9, 1970 a Motion to Stay the enforcement and execution, which was denied Sept. 24, 1970.

QUESTION PRESENTED

Whether South Carolina may condemn or take private property without evidence of, public use or necessity, for supposedly public parking, or diverted uses, in connection with its Tricentennial Celebration, using Federal funds in payment therefor, in violation of Appellants' guaranteed constitutional rights; and on which property a Federal Savings & Loan Association holds a mortgage.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution provides pertinent parts as follows:

Amendment V.

". . . Nor be deprived of, or property without due process of law; nor shall private property be taken for public use, without just compensation."

Article III. Section 1.

"The Judicial Power of the United States, shall be vested in one Supreme Court," . . .

Section 2.

"The judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, • • • ; to controversies to which the United States shall be a party; and between a State, or the citizens thereof, . . ."

STATEMENT

This is a Federal and State condemnation civil proceeding, in that it involves United States Treasury funds in payment for land and several hundred modern furnished rental apartments in four separate 3 story brick buildings, with new modern equipped restaurant, all situate on the premises and in use, the earnings and income, providing the appellant with her livelihood. Cert. Tr. record.

This action arose for purpose of solely and exclusively, condemning the appellant's property and buildings, with a special class statutory provision by the South Carolina General Assembly, designated Act. No. 1141 of the Acts and Joint Resolutions of 1966, approved on May 4, 1966, Act No. 925 of the Acts and Joint Resolutions of 1956, as amended, 1969—No. 293

to establish the South Carolina Tricentennial Commission, respondent herein, but said act did not grant or delegate, the powers of eminent domain, inherent to the State and its sovereign powers to condemn and acquire private property without consent of the owner, appellant herein, for temporary use, nonpublic uses and without reasonable necessity, as required and in noncompliance with congressional action where federal funds are applied for and used. Certified Record Nos. 3 and 4 Defendant's Exhibit K, Open Space Contract and Supreme Court opinion, 7/7/70. App. C, pp. 32a-36a, incl.

The Supreme Court of the United States has jurisdiction of this appeal, because substantial direct federal constitutional questions are involved, including the payments with United States Treasury funds, channeled and provided by Housing and Urban Act of 1965, as amended, but appropriated by action of the Congress. There is a diversity of citizenship and forceful taking of private property, without due process of law and without just and adequate compensation, to replace said properties and loss of earnings. Moreover, the Secretary of Housing and Urban Development by letter has advised the appellant that the use of the Treasury funds in payment of the condemnation properties, that there must not be any violation of Federal procedures, and that all federal statutes and regulations must absolutely be complied with and accompanying said letter was a copy of the said Regulations. No. OS-5, which have not been complied with, though an investigation was ordered by HUD officials, but no report. Cert. Record. No. 3. Defendant's Exhibit K and Regulations. Appendix B, pp. 26a-29a.

The South Carolina Tricentennial Commission celebration is for the duration of one year, 1970, which

is coming to a close, and the use of the appellant's properties after condemnation is a temporary use for one year now a few months, as a parking lot, because pursuant to the Joint Resolutions creating the Commission it will terminate by operation of law in 1972, and therefore the said Commission cannot retain title to the Appellant's property after 1972, but can use and dispose of appellant's property when the Tricentennial Celebration concludes in 1970 as it may see fit, private commercial purposes or otherwise, all in violation and in noncompliance with the use of funds from the United States Department of Housing and Urban Development, under Title VII of the Housing Act of 1961, as amended, in conflict with public policy and the HUD contract grant with the respondent which expired 6 months after May 29, 1969 since title to the property was not acquired. Cert. Transcript of Record. Defendant's Exhibit K, Open Space Contract. Since the Commission expires in 1972, the Contract was void and illegal 6 months after May 29, 1969. The United States Government. Grant Sec. 11, Project. App. C, pp. 32a to 36a incl.

REASONS FOR JURISDICTION

Constitutional Provisions Involved

United States Constitution provides pertinent parts as follows:

Amendment V.

". . . Nor be deprived of, or property without due process of law; nor shall private property be taken for public use, without just compensation."

Article III. Section 1.

"The Judicial Power of the United States, shall be vested in one Supreme Court," . . .

Section 2.

"The judicial power shall extend to all cases, in Law and Equity, arising under this Constitution, the Laws of the United States, * * * ; to controversies to which the United States shall be a party; and between a State, or the citizens thereof, ..."

The condemnation proceedings in this action below were invalid because the appellant was denied due process of law as guaranteed by the Constitution of the United States, and the forceful taking of her private properties, without just and reasonable compensation, by payment of a token of Three hundred and twenty five thousands ($325,000.00) Dollars, with money supplied in noncompliance by HUD from United States Treasury funds, whereas the investments over a period of 25 years by the appellant in said properties and equipment, possessed a fair market value of Two and one half million Dollars. These federal constitutional questions with the disbursement and use of United States Treasury funds pursuant to contract with HUD and the respondent, are directly involved and irrevocably interlocked in this appeal to this Court. App. C, 32a to 36a, incl.

The contract between Hud and respondent, with the use of federal funds from Washington, presents a novel and unique question heretofore, not passed on or decided by this Court, under the same facts and circumstances involved here, and should be settled by this Court, especially since there has been no complete and fair trial by due process of law, no determinations of the issues, nor personal service on the appellant by the trial Courts. The Order of the Trial Court

was printed as the opinion of the Supreme Court of South Carolina. Official Certified Record Nos. 3 & 4. Copy of opinion, App. A, pp. 1a to 25a incl., Tr. Certified Record.

Appellant contends, and respondent admits, that United States Treasury funds are used through HUD in payment of the condemnation properties. The appellant has a personal and official letter direct from The Secretary of Housing and Urban Development and transmitted therewith a copy of the Regulations which have not been complied with in the use of these funds, advising the appellant, that in the receipt and use of these federal funds from Washington, in payment for her condemnation properties, that there must not be any violation of the Federal procedures, and that all federal statutes and Regulations must absolutely be complied with. Sec. 401 et Seq., Housing and Urban Act of 1965, as amended.—Proceedings Published No. OS-5. Defendant's Exhibit K. No. 3 of Certified Record lodged in this Court, on appeals. App. B, pp. 26a-29a. Appellant further contends, it is a matter of fact and record, that the aforestated has not been complied with, though there was mention in said letter of an investigation by HUD.

The landmark of due process of law, is the opportunity to be heard, and the right to a trial of the federal and constitutional issues involved in the proper Court of rightful jurisdiction, but appellant has been denied this right under the federal laws and constitutional by the forceful taking of her properties with a token payment with federal funds by State Courts in condemnation, and this is another reason why the Supreme Court of the United States should take jurisdiction of this appeal.

Appellant, respectfully submits, that she is entitled to jurisdiction herein requested and to the protection of the Fifth amendment, and by this Court granting a decision appellant contends would certainly settle the Federal Constitutional condemnation question presented, and would afford a guideline in future federal and state condemnation proceedings, specifically where HUD is involved in the use of United States Treasury funds, as is illustrated here with its contract with respondent, invalid and in noncompliance, with HUD regulations. See App. C, pp. 32a to 36a incl.

This appeal will prove that the taking of the properties by State condemnation, the acquisition to be paid for with federal funds, for temporary public parking or otherwise, is a use not authorized by the United States Housing and Urban Development Act of 1965, as amended, and since the Tricentennial Commission, respondent herein, will expire by operation of law, and the Celebration will cease within three months hereafter, viz, 1970, certainly there is no necessity, for temporary parking uses or otherwise. Certified record. No. 3. Defendant's Exhibit K, Open Space land Contract. Regulation. No. OS-5. App. C, pp. 32a-36a. Moreover, these valuable properties, consisting of the land and four separate 3 story brick buildings, with all the modern equipment therein, no doubt would be converted to other uses and purposes, not authorized by law and in violation of the Housing Act, supra, and regulations. In addition, this is a violation of due process and equal protection of the Laws and outside of the scope of uses authorized by Congress and the Housing and Urban Act of 1965, as amended. App. B, pp. 26a to 29a incl.

The respondent and the United States Department of Housing and Development, specifically fails to comply with Section 11—The Project (b) the Public Body, respondent, agrees to retain said land, appellant's properties, for permanent open-space purposes, and the open-space use or uses of said land, * * *, because the respondent Commission expires by operation of law in 1972, and has no authority to contract to retain title to said properties beyond 1972, and this alone is in violation of the grant and uses, for open-space purposes and the acquisition with federal funds herein. The contract and Grant, proves that the respondent Commission is temporary in intent and purpose, and does not qualify or comply to acquire appellant's property under eminent domain proceedings for permanent public purposes. App. B, pp. 26a to 29a; App. C, pp. 32a to 36a, incl.

Regulation No. OS-5, HUD, supra, Reprinted 6/69, provides: The 90-day notice required by Item 3 of the statement shall be a written notice and shall be given to an owner-occupant as well as a tenant. If the property is acquired through eminent domain proceedings, "*the 90-day notice shall not be given prior to the date on which the Public Body acquires title to, or the right to possession of, the property.* Underscoring supplied. The Order of the Trial Court of Common Pleas for Richland County, of August 27, 1970 conveys title to the Public Body, respondent, herein on said date effective 30 days thereafter to take possession of the appellant's various properties. This failure alone is invalid and in noncompliance with the contract and regulations between HUD and the respondent, and it is respectfully submitted should be

another valid reason, for the Supreme Court of the United States, to grant jurisdiction. App. C, pp. 32a to 36a incl.. Regulation No. OS-5, HUD, *supra*, further provides:

> "When developed land is proposed for acquisition, it is expected that structures on the land will be small, and deteriorated or dilapidated."

The aforestated requirement is far from the case of record of appellant's valuable properties situated in the heart of down-town Columbia, South Carolina, The Capitol of the State, and valued at more than Two Million Dollars, with the 4 brick mansions, the land and the extensive equipment therein, and being forcefully condemned and taken with a token and nominal payment with HUD funds.

It is respectfully submitted in this Prayer for Jurisdiction, if respondent receives under invalid and unconstitutional statutes appellant's properties, then appellant will be caused irreparable injury and suffer substantial damages by permanent loss of her properties, apartments, equipment of great value, restaurant, earnings for her support and to pay debts and other commitments she has obligated, improvements and investments added for the past 25 years, a total loss of more than 3 million dollars, gone forever which cannot be assessed and recovered by law, not to mention loss of earnings therefrom, never to be replaced by this illegal condemnation, and without due process and just compensation, directly involved and interlocked with federal issues and funds.

Appellant prays that without this jurisdiction, she now has no reasonable or valid means, whereby her personal and substantial property rights and invest-

ment of 25 years may be preserved, and the federal and constitutional issues heard on the merits of her case. Where the United States Constitution is interpreted by this Honorable Court, relative to the exercise of the claimed power by a State of eminent domain, pursuant to federal grants and use in payments of United States Treasury funds, then there are certain basic rules of law, that the Constitution of the United States must be considered and respected, as superior to the State, whose legislative and Court powers are limited, as here. Article III. Section 1 and Section 2.

Appellant in answer to the respondent, The South Carolina Tricentennial Commission, designated as a temporary Body pursuant to and created by Section 3 of Joint Resolution 925 of the Acts and Joint Resolutions of South Carolina of 1956, as amended by Joint Resolution No. 1141 of 1966 and as further amended by Joint Resolution of 1969 bearing ratification No. 293, does not comply as a Public Body to retain Appellant's land and valuable costly buildings, for permanent open space purposes, since The BODY, viz, South Carolina Tricentennial Commission is temporary by its own creative law enactment, the celebration expires, December 1970, and the Body by legislative act aforesaid is terminated by law in 1972, and the U.S. Treasury funds grant is null and void by the Contract with HUD. See copy of contract in Appendix C, pp. 32a to 36a, incl.

Appellant respectfully submits, that every authority, statute and Court decision cited by the respondent and included in the trial Order and South Carolina Supreme Court decision, on appeal here by the appellant, concerns and relates to law relied on in South

Carolina Highway condemnation road and construction cases, city, municipal, state and state supported colleges, and those condemnation that fall in that category, without issue and payments of U.S. Treasury money in noncompliance with HUD regulations and contract with respondent. Appellant's valuable lands and building are being taken, pursuant to Special Class legislation, exclusive of other parties, properties, political subdivisions, partisanship, discriminatory, legislation enacted and directed personally against Annie Mary Timmons, appellant, and to the physical ejection and confiscation of her properties, by use and payment nominally with U.S. Treasury money, in violation of HUD's Contract and regulations, and without due process and just and reasonable compensation for a temporary state purpose and other diverted uses, pursuant to respondent's own special class legislation. Respondent cites not one single case in point and in the lower state court opinions in point and applicable to the facts of record here on appeal.

CONCLUSION

For the above reasons jurisdiction should be granted.

Respectfully submitted,

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October 7, 1970

APPENDIX

APPENDIX A

Opinion of the Supreme Court of South Carolina and Order of the Trial Court

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ANNIE MARY TIMMONS, *Appellant*,

v.

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION and DANIEL R. McLEOD, AS ATTORNEY GENERAL FOR THE STATE OF SOUTH CAROLINA, *Respondents*,

and

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION and DANIEL R. McLEOD, AS ATTORNEY GENERAL FOR THE STATE OF SOUTH CAROLINA, *Respondents*,

v.

ANNIE MARY TIMMONS and HOME FEDERAL SAVINGS AND LOAN ASSOCIATION, OF WHOM ANNIE MARY TIMMONS IS, *Appellant*.

Appeal From Richland County
John Grimball and George Bell Timmerman, Jr., Judges

OPINION NO. 19074

FILED JULY 7, 1970

AFFIRMED

N. Welch Morrisette, Jr.; and William H. Gibbes, of Berry, Lightsey, Gibbes & Bowers, of Columbia, for appellant in Timmons v. South Carolina Tricentennial Commission.

Arthur T. Cole, of Columbia, for appellant in South Carolina Tricentennial Commission v. Timmons.

Augustus T. Graydon, of Graydon & Suber; and Attorney General Daniel R. McLeod and Assistant Attorney General Everett N. Brandon, all of Columbia, for respondents.

LITTLEJOHN, A. J.: The South Carolina Tricentennial Commission, a State agency created by the General Assembly for the purpose of commemorating the 300th birthday of the State, brought an action against Annie Mary Timmons, a landowner, for the purpose of acquiring through the power of eminent domain a parcel of her real estate for use incident to the tricentennial celebration. In this case she is represented by Mr. Arthur T. Cole. We refer to this action as the condemnation proceeding.

Annie Mary Timmons brought an action against South Carolina Tricentennial Commission and against Daniel R. McLeod, as attorney general, under the Uniform Declaratory Judgment Act, seeking an injunction preventing acquisition of the property. In this case she is represented by Mr. N. Welch Morrisette, Jr. and Messrs. Berry, Lightsey, Gibbes and Bowers. We refer to this action as the injunction proceeding.

The injunction proceeding was tried in equity before Judge Grimball, resident judge of the Fifth Judicial Circuit, and resulted unfavorably to the landowner. Thereafter, the condemnation proceeding was tried before Judge Timmerman and a jury, resulting in a verdict for $325,000 in favor of the landowner.

The landowner, through respective counsel, has appealed in each case. Such appeals were argued together before this court and are ripe for our determination. We consider first,

THE INJUNCTION PROCEEDING

We have carefully studied each of the questions raised by counsel for the appellant as relates to whether an injunction should have been issued. We observe that the same questions were clearly presented to Judge Grimball, and from a study of his order we conclude that he correctly set forth and disposed of all of the issues raised on this appeal. The order of Judge Grimball shall be

printed as the opinion of this court, except that paragraph 4 at folio 531 and subsequent paragraphs of the order (relating to matters of no concern on this appeal) will not be included.

ORDER OF JUDGE GRIMBALL

Annie Mary Timmons is the owner of a lot in the block of land in which the Columbia Exhibit Center is being erected for South Carolina's Tricentennial celebration in 1970. All other properties in the block have been acquired by The South Carolina Tricentennial Commission by purchase. In May of 1969, a joint resolution of the General Assembly gave to The South Carolina Tricentennial Commission the power of eminent domain.

On June 6, 1969, a suit was filed in the clerk's office of this Court seeking to condemn this lot of Miss Timmons. On June 10, 1969, pursuant to a verified complaint presented to the Court on behalf of Miss Timmons, a temporary injunction was granted restraining The South Carolina Tricentennial Commission from proceeding in its condemnation action. A hearing on the issues raised in the landowner's suit (No. 3650) was set for August 13, but the hearing on the merits in that suit was delayed until August 19 when the landowner sought a continuation of the temporary injunction.

The hearing on August 19 was confined to the issues raised in the landowner's complaint in which she seeks a permanent injunction enjoining any proceedings to condemn her property. Upon a petition from Commission's counsel, this Court modified that temporary injunction to allow the Commission to file certain motions of a pretrial nature in the condemnation action; those matters are not for consideration at this time.

The Court will, however, comment hereinafter on the Commission's motion for consolidation of the two proceedings without making a final ruling on that motion.

That matter, along with other issues not raised in the landowner's proceeding, will be heard at a time set out in this order.

The landowner in her proceeding is testing the validity of the condemnation itself and the enactments under which the condemnation proceedings have been instituted.

The Commission's counsel has stated the points raised by the landowner in that proceeding as follows:

1. There is no necessity for the condemnation;

2. The condemnation does not result in a permanent taking of the property;

3. The taking does not involve a public use of the property as required in eminent domain proceedings;

4. The statutes are discriminatory and deny the landowner due process and the equal protection of the laws;

5. The legislative enactments under which the Commission is proceeding are special legislation, prohibited by Article III, Section 34, subsection 9 of the South Carolina Constitution;

6. The legislative enactments do not grant express authority for the condemnation and are defective.

At the hearing, the landowner testified as to her acquisition and development of the property, but none of her testimony related to the issues raised by her pleadings except the statement that the tract had no historical significance. Her counsel relied on the enactments creating The Tricentennial Commission and defining its powers and two letters relating to the enactment of the measure giving the Commission the power of eminent domain.

The Commission's witnesses testified as to the historical and architectural importance of the house and surrounding block, the proposed use of the property as the site for the Columbia exhibit center during The Tricentennial cele-

bration, the projected use of the property after 1970 and the permanent character of the taking. In connection with the latter testimony, the contract between the Commission and HUD and the enactment by the General Assembly of South Carolina in regard to the use of the property were introduced. Other exhibits relating to this property, its acquisition and use were placed in evidence.

I will now consider and rule on the various points raised by the pleadings and at the hearing. The testimony and exhibits relate principally to the necessity for the taking, the permanent nature of the taking and the public use of the condemned property. A letter offering certain testimony relating to the issue of special legislation was received in the Court subsequent to the hearing and will be considered in that part of this Order.

The six issues will be dealt with in the Order set out above.

(1) *The necessity for the Condemnation.*

In the law of eminent domain, it is well established that there must be a necessity for the taking, but this does not mean an absolute necessity, but rather a reasonable necessity. Seabrook v. Carolina Power & Light Co., 159 S. C. 1, 156 S. E. 1. Our Supreme Court said in White v. Johnson, 148 S. C. 488, 146 S. E. 411, 412:

> "It is well established law that necessity, as well as public use, must always exist in order to warrant the taking of lands, through condemnation, by a grantee of the power of eminent domain. The delegation of the right to exercise that power carries with it the implied condition that it shall be exercised only to the extent found necessary.
>
> "As to what is meant, in this connection, by the term 'necessity', we find the following in 20 C. J., at page

630: 'Necessity * * * does not mean an absolute but only a reasonable necessity, such as would combine the greatest benefit to the public with the least inconvenience and expense to the condemning party and the property owner consistent with each benefit * * *.'"

This block will be used as a site for a historical exhibit during 1970 and thereafter as a public park or garden and historic site. The block is the site of the Hampton-Preston house, an antebellum mansion in which the Hampton and Preston families lived prior to and during the Civil War. The house is being restored, and the gardens which were laid out over the entire block are to be replanted after the Tricentennial celebration.

The validity of condemnation for parks, public squares, historical sites or monuments has been established in many instances. The landowner complains that her properties are to be used for parking purposes, but that, too, is a recognized use for which lands can be condemned. Condemnations for ornamental or beautification purposes are recognized as necessary uses in several jurisdictions.

This use is clearly appropriate and fitting for the purposes for which the land is being condemned, and that is the test on the issue of necessity. This determination has been made by the Commission, and, unless the landowner can show that acquisition of this land is not reasonably necessary and is an abuse of discretion, the Court will not interfere.

The record before me establishes that the acquisition of this parcel (as well as all other parcels in this block), is reasonably necessary and in the interest of the public.

This taking is therefore necessary within the meaning of the law of eminent domain, and there is no basis for enjoining the condemnation on this ground.

(2) *The Permanent Nature of the Taking.*

Landowner contends that the taking is not permanent because The South Carolina Tricentennial Commission will terminate on January 1, 1972, under the terms of the enactments by which it has been created by the General Assembly.

The Commission has been delegated the power of eminent domain, and the condemnation proceedings have been instituted to acquire the fee simple title to the lot of this landowner. That power was expressly granted to the Commission by the joint resolution of the General Assembly adopted in May of 1969. Joint Resolution R. 293, Acts of the General Assembly of 1969.

Prior to that enactment the General Assembly provided that lands acquired with funds of the United States Department of Housing and Urban Development (HUD) under Title VII of the housing act as amended upon the termination of the Commission "shall be turned over to the State or such other governmental entity as the General Assembly may direct, to be preserved and used for park purposes." Acts of the General Assembly of South Carolina, 1968 No. 1384 Amending Act No. 925 of 1956, as amended. This lot is subject to these provisions since HUD funds will be used in the acquisition.

The title being acquired in a condemnation proceeding is determined by the pleadings; the Petition and Declaration of Taking in this case contemplate a fee simple title being acquired from the landowner.

The subsequent abandonment of the original purpose for which the lands were taken would not affect the validity of the condemnation. "The validity of title is determined by the conditions existing at the time of the taking." Higginson v. United States, C. C. A. 6, 384 F. (2d) 504. But here the state and its delegated agency are precluded from any use of this property other than a permanent

one by virtue of the contract with HUD and the act enacted pursuant to that contract.

The taking in this instance is therefore a permanent one; even though the Commission will terminate in 1972, the property will remain vested in the state—just as much so as the state highways, the property of state universities or the lands of numerous commissions and agencies created by the General Assembly. The tract in this instance is being condemned by the state itself and will be preserved as a park.

The taking is permanent in nature, and there is no basis for an injunction on the grounds that the taking is for a temporary use.

(3) *The Public Use in This Taking.*

The landowner contends that the taking does not involve a public use of the property. Lands cannot be condemned for other than a public use of the same. The meaning of that terms as applied in the law of eminent domain must therefore be ascertained.

The term public use is an elastic one and must keep abreast of changing social conditions, and the question is one of fact in each particular case. Gasque v. Town of Conway, 194 S. C. 15, 8 S. E. (2d) 871. "From the nature of the case, there can be no precise line. The power requires a degree of elasticity to be capable of meeting new conditions and improvements and the ever-increasing necessities of society. The sole dependence must be on the personal wisdom of the sovereign authority, supervised, and in cases of gross error or extreme wrong controlled by the dispassionate judgment of the courts." Olmstead v. Camp, 33 Conn., 532, 551, 89 Am. Dec. 221.

In Riley v. Union Station Co., 71 S. C. 457, 461, 51 S. E. 485, our Supreme Court confirmed a circuit court decree which used this language:

> "What constitutes a public use? 'The term public use is flexible and cannot be confined to public use known

> at the time of framing the Constitution. All improvements that may be made, if useful to the public, may be encouraged by the exercise of eminent domain. Any use of anything which will satisfy a reasonable public demand for facilities of travel, for transmission of intelligence or commodities, would be public use." Trenton, etc. Turnpike Co. v. American, etc., Commercial News Co., 43 N. J. L. 384. * * *

In Edens v. City of Columbia, 228 S. C. 563, 91 S. E. (2d) 280, 282, our Court said:

> "* * * In still other states the power of eminent domain may be exercised for a public purpose, benefit or the public welfare, as contrasted with the requirement of our constitution that it be for a public use. Redevelopment Agency, etc. v. Hayes, 1954, 122 Ca. App. (2d) 777, 266 P. (2d) 105; Schenck v. City of Pittsburgh, 1950, 364 Pa. 31, 70 A. (2d) 612; State ex rel. Bruestle v. Rich, 1953, 159 Ohio St. 13, 110 N. E. (2d) 778; Nashville Housing Authority v. City of Nashville, 1951, 192 Tenn. 103, 237 S. W. (2d) 946; Velishka v. City of Nashua, 1954, 141 Conn. 135, 104 A. (2d) 365, 368."

From the last cited we quote:

> "In this state [Connecticut] it is settled that public use means public usefulness, utility or advantage, or what is productive of general benefit, so that any appropriating of private property by the state under its right of eminent domain, for purposes of great advantage to the community, is a taking for public use."

A park for the use of the public has long been recognized as a public use. Wright v. Walcott, 238 Mass. 432, 131 N. E. 291, 292, 18 A. L. R. 1242; U. S. v. Dieckman, 101 F.(2d) 421, 424; Johnson v. City of Corpus

Christi, 416 S. W. (2d) 504; Johnson City v. Cloniger, 213 Tenn. 71, 372 S. W. (2d) 281. Thus a public use was recognized in a Mississippi case where the land was condemned for pollution control, control of access, public park and picnic areas, and as a wild life sanctuary. Pearl River Valley Water Supply District v. Brown, 248 Miss. 4, 156 So. (2d) 572, 576. As long as the use is of benefit, utility or advantage to the public, the use is a public one within the meaning of the law of eminent domain. Public health, recreation and enjoyment are recognized public uses. Rindge Co. v. Los Angeles County, Cal., 262 U.S. 700, 43 S. Ct. 689, 67 L. Ed. 1186.

Even though the lands could not be adapted for use as a park, the taking of a portion of the palisades on the Hudson River adjoining a state park for the purpose of preserving the scenic beauty of the river and of the park was for a "public use". Bunyan v. Commissioners of Palisades Interstate Park, 153 N. Y. S. 622, 627, 167 App. Div. 457.

Parking, not a problem in most areas before the advent of the automobile, is now a recognized public use for which properties may be condemned. City of Richmond v. Dervishian, 190 Va. 398, 57 S. E. (2d) 120, 124. The fact that such a parking area would benefit nearby stores did not prevent the condemnation for a "public use." Even though a public parking area might be of special benefit to private individuals, off-street parking facilities in public ownership constitutes a "public use" in an eminent domain proceeding. Ermels v. City of Webster City, 246 Iowa 1305, 71 N. W. (2d) 911, 912.

The condemnation of a site of historical significance, such as the Star Spangled Banner Flag House has been recognized as a public use. Flaccomio v. Mayor and City Council of Baltimore, 194 Md. 275, 71 A (2d) 12, 14. Preserving and marking the site of the Battle of Gettysburg was held to be a public use of lands and therefore subject to con-

demnation. U. S. v. Gettysburg Electric R. Co., 160 U. S. 668, 16 S. Ct. 427, 429, 40 L. Ed. 576. So also the taking of lands for a memorial to the sailors of Salem, Mass., was for a public use in the constitutional sense. In re opinion of the Judges, 297 Mass. 567, 8 N. E. (2d) 753.

The landowner contends that there is no public use in this taking and cites the case of Edens v. Columbia, 228 S. C. 563, 91 S. E. (2d) 280 and Tuomey Hospital v. Sumter, 243 S. C. 544, 134 S. E. (2d) 744, in support of that position. Both of those cases involved condemnation for private uses; here the use is a public one, for a public purpose and of public benefit.

In Edens, the lands were being condemned for clearance of a slum area and resale to private persons or corporations for commercial and industrial development. The Court properly held that this was a condemnation for a private use. No such plan is involved here; in fact, the contract by which the lands are being acquired with HUD funds and the legislative enactment specifically restrict the use of the property indefinitely to public park purposes.

In Tuomey Hospital, the establishment which sought the protection of *public use* was an eleemosynary hospital corporation created under a will; the court held that a factual issue as to the public or private nature of the hospital had to be resolved at trial. There is no question about the status of The South Carolina Tricentennial Commission; it is a public body, a part of the State of South Carolina itself.

That the uses for which this property, along with other sites for the Tricentennial exhibits, are being taken are public purposes was recognized in the case involving the bond issue with which these lands in part are being purchased. Historical and recreational purposes are recognized public uses. See Mims v. McNair, — S. C. —, 165 S. E. (2d) 355, 363.

Nothing in this record shows that this property is being taken for any private use; in fact the contract with HUD and the legislative enactment of 1968 preclude anything save a public use of the block, including the lands of this landowner.

In most cases there are no such stringent requirements, but here there can be no use of this property other than a public use.

This lot is being taken for a public use under the specific enactments of the General Assembly; any private use of the property would be in direct contravention of the legislative direction.

The taking of this property is for a public use, and there is no basis for granting an injunction on this grounds.

(4) *No Denial of Constitutional Protections in this Proceeding.*

The landowner is being afforded the protection and rights guaranteed her by the Constitutions of the United States and South Carolina.

If the taking of property under eminent domain proceedings accords the landowner a reasonable opportunity to be heard on the question of damages, then the essentials of due process are met. The courts, in an eminent domain proceeding, are not concerned with the wisdom of the law granting the power of eminent domain. 26 American Jurisprudence (2d) p. 647, 661 Eminent Domain No. 8 and No. 19.

As far as due process and equal protection of the laws are concerned, no particular procedure is guaranteed. The constitutional requirements are satisfied if the condemnee has:

(1) Reasonable notice,

(2) Reasonable opportunity to be heard and present the claim or defense, and

(3) Reasonable compensation for the property taken. 27 American Jurisprudence (2d) p. 242 Eminent Domain No. 376.

Whether there is a necessity, a permanent taking or a public use are primarily legislative questions, and there is a presumption that the use contemplated is a necessary, permanent and public one. The burden would be upon the landowner to show that the public use is a sham and a fraud. 27 American Jurisprudence (2d) p. 283. Eminent Domain No. 403.

If there is no necessity for the use or the condemnation proceeding's purpose is to cloak some sinister scheme, then the courts may interfere with the taking, but there is no showing of that kind here. There has been no abuse of the legislative power in this case on the matter of the necessity, permanent taking or public use of the property.

If the trial accords the landowner the guarantee of adequate compensation under equitable rules, then the requirements of due process are met. That will be done by the procedure prescribed for this taking.

I have already ruled on the matters which might deny the landowner due process and the equal protection of the laws; there is no basis for an injunction on these grounds.

(5) *The Legislative Enactment Giving the Power of Eminent Domain to the Tricentennial Commission as General Legislation.*

Landowner attacks that the legislation as special legislation prohibited by the South Carolina Constitution on two grounds:

(1) The Public Works Eminent Domain Law, which excludes several counties from its effect, is unconstitutional.

(2) The legislative enactment granting the power of eminent domain is special legislation since in practice it applies only to this landowner.

As far as the issue of special legislation in regard to the Public Works Eminent Domain Laws is concerned, the case of University of South Carolina v. Mehlman, 245 S. C. 180, 139 S. E. (2d) 771, disposes of this issue. Mehlman contended that the Public Works Eminent Domain Laws was special legislation because it excluded seven counties from its provisions. In that case, I held that this law was void and unconstitutional, but the Supreme Court refused to pass on that issue. Instead the court held that the General Assembly merely prescribed the manner in which the University was to exercise the power of eminent domain.

The statute, according to the Court's decision, incorporated by reference those parts of the Public Works Eminent Domain Laws which are general in nature. Since this did not include those special provisions excluding certain counties the general provisions only applied and the University's power of eminent domain was upheld.

The same reasoning applies to the enactments which gave The Tricentennial Commission the power to condemn. The Joint Resolution merely prescribed the manner in which the power is to be exercised—that is, in accord with the general statutory procedure set out in Chapter 3, Title 25 of the Code. The language used is "in the manner prescribed . . ."

The Mehlman case is directly in point and is the basis for holding that the enactment is not special legislation. There is no basis for a holding that the provision excluding certain counties in the Public Works Eminent Domain Act constitute special legislation, for this provision is not a part of the procedure prescribed in granting the exercise of the power of eminent domain to this Commission.

(2) The legislation is general in its terms and application and the fact that it may only be invoked on account of one landowner would not make this special legislation.

On the question of special legislation, the Supreme Court said in Elliott, et al., v. Sligh, 223 S. C. 161, 103 S. E. (2d) 923:

> "* * * The fact that legislation is expressed in general terms is not controlling. A law general in form, but special in its operation, violates a constitutional inhibition of special legislation as much as one special in form. The question must be decided not by the letter, but by the spirit and practical operation of the act. Town of Forest Acres v. Town of Forest Lake, 226 S. C. 349, 85 S. E. (2d) 192."

The legislation in Elliott prohibited the sale of fireworks "in a county containing a municipality having a population of over sixty five thousand inhabitants according to the last official United States census." Only Richland and Charleston counties were affected. The law was attacked as special legislation prohibited by Article III, Section 34, Subdivision 9 of the South Carolina Constitution. The Court said in Elliott (233 S. C. p. 165):

> "All considerations involving the wisdom, policy or expediency of an act are addressed exclusively to the General Assembly. We are only concerned with the power of that body to enact a law. Every presumption will be made in favor of the constitutionality of a legislative enactment. But when the unconstitutionality of an act is clear to this court, beyond a reasonable doubt, then it is its plain duty to say so, Thomas v. Macklen, 186 S. C. 290, 195 S. E. 539."

Holding that a population classification has "no natural or logical relation" to the purpose of the fireworks statute, the Supreme Court in Elliott held that a general law ap-

plicable to the whole state was proper and that the special act was therefore unconstitutional.

In the Forest Acres case, the same rule applied as in the Elliott case: although general in terms, the legislative enactment applied only to counties containing a city of over 85,000 in the 1950 census. Only Richland County fitted into this category. The Court held that the classification was arbitrary and that this fact made this special legislation since by its express terms it applied to only one county and four small municipalities in that county which could have been annexed.

There are no limitations in the legislation which granted this power to The Tricentennial Commission. The fact the funds have been appropriated for acquisition of lands only in Charleston, Richland and Greenville counties is not determinative of the issue. The General Assembly could have appropriated funds for projects in all 46 counties. The grant of power is in no way restricted. There are therefore none of the evils of special legislation.

The power being general in its terms and general in its application, this is not special legislation and does not smack of the evil at which the constitutional prohibition was aimed. As Elliott shows, the purpose of the provision is to prevent the legislature "in its wisdom" from creating 46 different county governments or penalizing some particular counties.

The evil at which the constitutional provision against special legislation was aimed resulted from "legislation by delegation." As the Court said in Tisdale v. Scarborough, 99 S. C. 377, 83 S. E. 594:

> "• • • That kind of legislation [i.e., special legislation] was deemed pernicious; it lacked the settled consideration and consent of the lawmaking body; it evaded state-wide responsibility; it encouraged local activity; it discouraged the attrition of minds and the

consideration of those problems which make for a wise public policy * * *."

The fact that the enactment only affects one person or one locale does not make the act special legislation. Spitcanfsky v. Hatten, 353 Mo. 94, 182 S. W. (2d) 86, 160 A. L. R. 990, 1021.

In Eyess Woolen Co. v. Gilsum, 146 Atl. 511, 64 A. L. R. 1196, the New Hampshire court held that a statute exempting a particular private corporation from taxes was improper, where a general law would have been appropriate. As long as a law operates uniformly, it is not obnoxious to a constitutional provision against special legislation. People v. Wood, 391, Ill. 237, 161 A. L. R. 718, 62 N. E. (2d) 809. The fact that a particular law would apply to only one city where a population basis was provided would not make that law special legislation. State of Iowa v. Darling, 246 N. W. (Iowa) 390, 88 A. L. R. 218.

The designation of the highways to be paved in a particular county contravenes the prohibition against special legislation. Knight v. Hollings, 242 S. C. 1, 129 S. E. (2d) 746. A bill to provide for appointment of members of forestry board of a particular county was unconstitutional where there was a general statute providing for such appointments. McElveen v. Stokes, 240 S. C. 1, 124 S. E. (2d) 592.

The case of Elliott v. Cass, 241 S. C. 96, 127 S. E. (2d) 206, involved an attempt by the City of Greenville to allow the construction by private individuals of a motor vehicle parking building over a public street. The city issued a permit for that purpose, and in 1959 that action was enjoined. An act limiting the population bracket to Greenville was vetoed by the Governor in 1960 as special legislation, and an act general in form was held unconstitutional where the act allowed the private owners "to encroach over a State Highway in the construction of a private busi-

ness building and that this privilege is denied to any and all other persons." [Ellison v. Cass, supra, 241 S. C. at page 101.]

The case of Thomas v. Macklen, 186 S. C. 290, 195 S. E. 539, cited in the Cass case, involved a statute prescribing incorporation of "resort communities". The Supreme Court held that act invalid because there was no reasonable basis for the special legislation enacted which was passed to apply to Myrtle Beach.

After the hearing and testimony were completed, the landowner's attorneys in connection with the submission of their reply brief asked the Court to consider certain additional evidence which was "discovered" after the hearing on the merits. That testimony consists of statements made before the Judiciary Committee of the House of Representatives of the General Assembly during a hearing on the proposed legislation granting the power of eminent domain to the South Carolina Tricentennial Commission.

The members of that committee, according to this offer of testimony, would have testified that the executive director of the Commission advised the committee "that the power requested by the Tricentennial Commission of eminent domain was only to be used in Columbia, South Carolina * * *" and that "its use was not anticipated elsewhere."

These witnesses, according to the landowner's attorneys, would also testify that this assurance "expressed the intended purpose of the legislation and was necessary for its approval by the committee."

Counsel for the Commission has objected to the offer of all such testimony on the grounds that testimony at the hearing is irrelevant in the absence of an ambiguity in the enactment and additionally that the testimony as to the purpose and circumstances of the approval of the enactment consists of conclusions on the part of the witnesses.

While this testimony is not properly before the Court and a complete legislative history might reveal other testimony as to the purposes and course of this legislation's passage, I am considering the same in order to prevent any further delays in the consideration of the issues before the Court on the validity of this statute.

If a statute is clear and explicit in its language, then there is no need to resort to statutory interpretation or legislative intent to determine its meaning. The enactment here is clear, precise and explicit; it grants to this Commission the power of eminent domain to be exercised in the manner prescribed in the Public Works Eminent Domain Statute.

The fact that this enactment is going to be used in only one locale or that it may be used against this landowner is not determinative of the issue: the statute is general in its application, and it is not directed at any particular person.

The fact that the enactment operates as to only one person is not the test. Had one person or area been excluded from the operation of the statute, that might be fatal, but here the statute has no such exclusions.

Where the language of a statute is doubtful or uncertain in meaning, then the Court can look to the circumstances and conditions existing at the time of its enactment. Abell v. Bell, 229 S. C. 1, 91 S. E. (2d) 548. But where the language is clear and explicit, the courts cannot rewrite the statute and inject matters into the statute which are not in the legislature's language. United States v. Shirah, C. C. A. 4, 253 F. (2d) 798, 800.

Legislative enactments are to be construed as they are written, and, unless there is an ambiguity in the legislation, resort to statements by members of a committee will not be considered in construing a particular piece of legislation. 50 American Jurisprudence pps. 326-328, Statutes Nos. 335-337.

As our Court said in Abell v. Bell, 229 S. C. 1, 4, 91 S. E. (2d) 548:

> "If the intent of the legislature be clearly apparent from it language, the court may not embark upon a search for it dehors the statute. * * *
>
> "But where the language of the statute gives rise to doubt or uncertainty as to the legislative intent, the search for that intent may range; for it must be gathered from a reading of the statute as a whole in the light of the circumstances and conditions existing at the time of its enactment. * * *"

Nothing is required to interpret or construe the legislative enactment which gave this Commission the power of eminent domain. The grant of power is complete, plain and unambiguous. Legislative intent in such a case is to be determined from the language employed; legislative history only can be resorted to for the purpose of solving doubt, not for the purpose of creating it.

This being the case, I hold that this is not special legislation and that the act is constitutional.

(6) *The Enactment Granting the Power of Eminent Domain Not Defective.*

The enactment granting the power is specific and clear; that the legislature can delegate the power of eminent domain to subsidiary agencies is settled.

The landowner complains because the joint resolution granting the power of eminent domain only referred to the resolutions of 1956 and 1966 in its title and referred to the 1956 act "as amended". Even if this title reference alone is considered, that would not destroy the validity of the statute because it is the section adopted in 1966 which is being amended.

The body of the resolution uses the simple language "as amended" in referring to the original (1956) resolution, and this would certainly include all subsequent enactments.

The landowner contends that because the express statute was not referred to in the enacting phrase (Act No. 1141, 1966), the enactment is defective. The answer is:

(1) The particular enactment being amended (No. 1141, 1966) was referred to specifically in the title,

(2) The express section being amended was specifically quoted, and

(3) There is no difficulty in determining the amendments to the original (1956) act.

The express wording of the statute shows that the General Assembly in explicit and clear language gave to The South Carolina Tricentennial Commission the power of eminent domain.

The legislative enactments (other than appropriations bills and bond enactments) show the present status of the 1956 act, as amended in 1966, 1968, and 1969. Wherein there is a defect is not apparent to the Court.

The act as enacted is clear and specific, and the legislative authority for the proceedings in eminent domain has been specifically granted by the General Assembly.

Accordingly there is no basis for holding the act defective.

It is therefore ordered:

1. That the temporary injunction enjoining condemnation proceedings against Annie Mary Timmons is hereby dissolved;

2. That the prayer for a permanent injunction is denied;

3. That the Complaint of the Landowner in Docket No. 3650 is dismissed.

We now consider,

THE CONDEMNATION PROCEEDING

The landowner filed ten exceptions alleging error on the part of the lower court and asked that a new trial be granted. Such exceptions are reduced to four questions as set forth in appellant's brief as follows:

QUESTION I

> "Did the trial judge err in abusing his discretion by refusing appellants motions for a continuance and should he have granted appellant a new trial by reason thereof?"

The condemnation proceeding was commenced June 6, 1969. The injunction proceeding was commenced four days later. Service in the condemnation proceeding was effected after the process server made 42 trips to the apartment of Miss Timmons. She denied that she was ever served, but the trial judge found as a fact that service had been brought about. After an order had been filed denying an injunction in the injunction proceeding, the landowner, about October 1, employed Owen T. Cobb, Jr. of the Columbia Bar, to represent her in the condemnation case. He appeared for her at a deposition hearing October 24, 1969, and on November 12, 1969 appeared in this court asking a stay of proceedings, which was denied. Mr. Cobb and Miss Timmons could not agree upon a contract for legal services and the trial court relieved him as counsel on November 20, 1969. Simultaneously, the court set a pretrial conference for November 25, 1969, and set the trial for December 1, 1969. On November 19, 1969 she employed Mr. Cole, who is now her counsel, and he appeared in the case for the first time at the pretrial hearing November 25.

On December 1 Mr. Cole moved for a continuance based on a certificate of an intern of the Aiken County Hospital emergency room dated November 29, 1969, and a certificate

of a medical doctor in Columbia at the emergency room on the morning of December 1. Each certificate indicated that Mr. Cole had an upper respiratory infection. The motion was overruled and the case proceeded to trial, consuming a total of five days. Mr. Cole participated in the case, and on December 8 appeared to move for a new trial.

The matter of a continuance is addressed to the discretion of the trial court; such a ruling will not be disturbed unless manifestly erroneous. Poston v. Home Insurance Company of New York, 191 S. C. 314, 4 S. E. (2d) 261. Neither of the statements indicated that Mr. Cole's health would be impaired by a courtroom appearance. No further showing of inability to try the case was made during the five day proceeding. We find no abuse of discretion.

QUESTION II

"Did the trial judge err by admitting evidence over objections and/or motions to strike of appellant's counsel and should he have granted appellant a new trial by reason thereof?"

The admission of evidence is largely a matter of discretion of the trial judge. In order for this court to reverse a case based on the erroneous admission or erroneous exclusion of evidence the plaintiff must show error and prejudice. The testimony is not printed as a part of the transcript of record; we cannot find in the record before us basis for holding that there was such an abuse of discretion as to warrant a new trial.

QUESTION III

"Did the trial judge err by by excluding evidence preffered by appellant with respect to pending injunction suit in Richland County Court by appellant against City of Columbia?"

The record shows that the appellant on October 24, 1968, through counsel not heretofore mentioned in this proceed-

ing, commenced an action against the City of Columbia in the Richland County Court asking that the City of Columbia be enjoined from using its powers of eminent domain to condemn the property here involved for the benefit of the South Carolina Tricentennial Commission. The issue involved in a condemnation proceeding is value of property. Apparently counsel contends that evidence relative to this county court action should have been admitted in evidence to show prejudice of witnesses for the respondent and as it might affect their credibility. Although evidence attacking the credibility of an adverse witness is normally admissible, we cannot say that there has been reversible error since the testimony of the witnesses is not before us.

QUESTION IV

> "Did the errors and/or abuses of discretion on the part of the trial judge, taken together as a whole, constitute a denial of due process of law guaranteed to this appellant by the State and Federal Constitutions?"

The effect of appellant's contention in this question is to generally attack the entire procedure. Counsel argues that four days' notice of the hearing resulting in Judge Timmerman's order of November 20, 1969, was not given as required by the Code. This order, among other things setting the trial for December 1, is not the type of order contemplated by the Code. The trial judge may set a case for trial without a four day notice, or for that matter, may call a case to trial without any order having previously been issued. The fact that the appellant was advised that the case would be tried on a certain day should have been helpful in preparation of the case. If it was difficult for counsel to prepare for trial after he was belatedly employed, such is largely attributable to his client's failure to arrange for her own representation. It is not an error attributable to the court.

In a condemnation proceeding the issues are simple. The court is in quest of the reasonable fair market value of the property taken. There is nothing in the transcript before us to convince us that ample opportunity to explore that issue was not afforded the landowner.

The appeal in the condemnation case is accordingly found to be without merit, and the judgment of the lower court in both the injunction proceeding and the condemnation proceeding is,

AFFIRMED.

MOSS, C. J., LEWIS, BUSSEY and BRAILSFORD, JJ., concur.

APPENDIX B

Regulation

OPEN-SPACE PROGRAM, LETTER NO. OS-5 (REPRINTED 6-69)

(Pages 13, 14, 15)

THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

Oct. 21, 1969

Miss Annie Mary Timmons
1620 Laurel Street
Columbia, South Carolina 29201

Dear Miss Timmons:

This is in reply to your letter of October 6 concerning the acquisition of your property by the South Carolina Tricentennial Commission under the Open Space Land Program (Project Number S. C. OSA-5-DL).

The Department has already approved this project and has signed a contract with the Tricentennial Commission to carry out the project. However, when it is necessary to

acquire property by condemnation, specific Federal procedures must be followed by the agency receiving Federal assistance. From your letter, it is not possible to tell whether or not Federal procedures have been violated by the Tricentennial Commission in acquiring your property. I am, therefore, enclosing our procedures published as Letter No. OS-5. Please refer to the "Compensation of Condemnees" section on pages 13 through 15. If, after reading these procedures, you believe the Tricentennial Commission is in violation of Federal regulations, please make your specific complaint known to our Atlanta Regional Office. You should contact Mr. Thomas Armstrong, Assistant Regional Administrator for Metropolitan Development. His address is Peachtree-Seventh Building, Atlanta, Georgia 30323, and his telephone number is 404-526-3468.

If a violation of Federal procedures has occurred, you may be assured that our Atlanta office will assist you.

Sincerely,

GEORGE ROMNEY
George Romney

Enclosures

METROPOLITAN DEVELOPMENT OFFICE
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PEACHTREE SEVENTH BUILDING, ATLANTA, GEORGIA 30323
Room 645

REGION III

November 12, 1969
In Reply Refer To: 3MB

Miss Anne Mary Timmons
1620 Laurel Street
Columbia, South Carolina 29201

Dear Miss Timmons:

This is in response to your letter of October 25, 1969, concerning the acquisition of your property by the Tri-Centennial Commission.

It is the responsibility of the Commission to acquire property in such a manner as to comply with local and state laws as well as contracts with this Department when Federal funds are used.

Enclosed is a copy of our letter to Mr. James M. Barnett. You will be advised if any additional information is required.

Sincerely yours,

JACK W. BAUGH
For Thomas J. Armstrong
Assistant Regional Administrator

Enclosure

METROPOLITAN DEVELOPMENT OFFICE
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PEACHTREE SEVENTH BUILDING, ATLANTA, GEORGIA 30323
Room 645

REGION III

November 12, 1969
In Reply Refer To: 3MB

Mr. James M. Barnett, Executive Director
South Carolina Tri-Centennial Commission
P.O. Box 1970
Columbia, South Carolina 29202

Dear Mr. Barnett:

Enclosed is a copy of Miss Anne Mary Timmons' letter of October 25, 1969.

We would appreciate your giving us a full report in regard to the matters set forth in this letter, especially as to the steps taken by the Commission in regard to its land acquisition policies as required by Section 401 et seq. of the Housing and Urban Development Act of 1965 as amended.

Sincerely yours,

THOMAS J. ARMSTRONG
Assistant Regional Administrator

Enclosure

cc: Miss Anne Mary Timmons
1620 Laurel Street
Columbia, South Carolina 29201

Compensation of Condemnees

Section 402 of the Housing and Urban Development Act of 1965 requires that, as a condition of eligibility for Title VII assistance, the applicant shall satisfy HHFA that it will follow certain prescribed policies in the acquisition of real property by eminent domain.

Accordingly, the application for grant (Checklist Code No. OS 124) shall include a Land Acquisition Policy Statement assuring that, in the acquisition of real property with such grant assistance, the Public Body will:

1. Make every reasonable effort to acquire each property by negotiated purchase before instituting eminent domain proceedings against the property.

2. Not require any owner to surrender the right to possession of his property until the Public Body pays, or causes to be paid, to the owner (a) the agreed purchase price arrived at by negotiation, or (b) in any case where only the amount of the payment to the owner is in dispute, not less than 75 percent of the appraised fair value as approved by the Public Body and concurred in by HHFA.

3. Not require any person lawfully occupying property to surrender possession without at least 90 days' written notice from the Public Body of the date on which possession will be required.

References to eminent domain proceedings in the applicant's statement include administrative takings and similar proceedings for the compulsory acquisition of real property. Item 1 of the statement precludes the filing of blanket condemnations.

With respect to Item 1 of the statement, "every reasonable effort to acquire each property by negotiated purchase" means that (1) the Public Body, directly or through its real estate agent, shall make a diligent, conscientious

effort to induce the owner to accept a fair and proper price for his property, and (2) if that effort is unsuccessful, the Public Body shall make a final offer to the owner in writing. The final offer shall include an invitation to discuss the acquisition of his property with the Public Body, afford a reasonable period of time for the owner to accept or reject the invitation, and include a notification of the date on which the Public Body intends to institute eminent domain proceedings if agreement cannot be reached on the purchase of the property within the time specified.

If only the amount of the payment to the owner is in dispute, Item 2 of the statement will be regarded as being met by a deposit in court of at least 75 percent of the appraised fair value, provided the deposit is withdrawable by the owner without prejudice to his right to obtain a subsequent determination of the value of the property by the court. If State or local eminent domain law does not provide for such a deposit or other payment to the owner of at least 75 percent of the Public Body's valuation of the property before the Public Body can take possession of the property, the Public Body shall pay such an amount to the owner in addition to following the requirements of its own law. This 75 percent payment is to be applied to the ultimate price for the property established by the eminent domain proceeding. Once judgment has been rendered in an eminent domain proceeding with respect to property which the Public Body has not previously taken possession of, the requirement in Item 2 will be regarded as being met either by direct payment of the award to the owner or by deposit in court of the amount of the award. A tender of payment to the owner, whether or not accepted by the owner, will be regarded as payment.

The 90-day notice required by Item 3 of the statement shall be a written notice and shall be given to an owner-occupant as well as a tenant. If the property is acquired through eminent domain proceedings, the 90-day notice

shall not be given prior to the date on which the Public Body acquires title to, or the right to possession of, the property. If the Public Body has entered into an agreement with the owner to purchase the property, the date set in the notice for surrendering possession shall be not earlier than 90 days after the Public Body gives the notice and not earlier than the date on which the owner is obligated under the agreement to deliver title or the right to possession to the Public Body.

The Public Body shall maintain records of its negotiations and other actions, including reports of its real estate agency or staff negotiator on all negotiations with property owners, as evidence of its adherence to the required policy.

LAND ACQUISITION—DEVELOPED LAND

An application for grant to acquire developed land (see "'Developed Land' and 'Predominantly Undeveloped Land'" above) will be approved only if the following two specific findings are made:

1. The land is located in a built-up portion of the urban area.

2. The open-space use proposed for the developed land cannot be provided by the use of undeveloped or predominently undeveloped land in the same portion of the urban area.

When developed land is proposed for acquisition, it is expected that structures on the land will be small, and deteriorated or dilapidated. If standard structures will be acquired and demolished, the application for grant (Checklist Code No. OS 121) shall include a statement justifying the acquisition and demolition of standard structures.

APPENDIX C

Contract

(Known as Defendant's Exhibit K)

METROPOLITAN DEVELOPMENT OFFICE
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
PEACHTREE SEVENTH BUILDING, ATLANTA, GEORGIA 30323
Room 645

Region III

May 27, 1969

In Reply Refer To: 3GM

Mr. James M. Barnett
Executive Director
South Carolina Tricentennial Commission
829 Richland Street
Columbia, South Carolina 29202

Dear Mr. Barnett:

Subject: Open-Space Land Contract
No. S.C. OSA-5(DL)(G)
Project No. S.C. OSA-5(DL)

Enclosed herewith for your records is one fully-executed counterpart of the above-identified Contract.

Sincerely yours,

JAMES W. BOONE
For Thomas J. Armstrong
Assistant Regional
Administrator

Enclosure

The undersigned hereby certifies that the within is an original exhibit in the action on appeal, Annie Mary Timmons, Appellant vs. The South Carolina Tricentennial Commission et al, Respondents.

N. WELCH MORRISETTE, JR.
N. Welch Morrisette, Jr.
Attorneys for Appellant

WILLIAM H. GIBBES
William H. Gibbes
Attorneys for Appellant

AUGUSTUS T. GRAYDON
Augustus T. Graydon
Attorney for Respondents.

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

CONTRACT FOR GRANT TO ACQUIRE AND/OR DEVELOP LAND FOR OPEN-SPACE PURPOSES UNDER TITLE VII OF THE HOUSING ACT OF 1961, AS AMENDED

PART I

Project No. S.C. OSA-5(DL)
Contract No. S.C. OSA-5(DL)(G)

THIS AGREEMENT, consisting of this Part I and the Terms and Conditions (Form HUD-3180b, dated 5-68) forming Part II hereof (which Parts, together, are herein called the "Contract"), effective on the date hereinbelow set out, by and between South Carolina Tricentennial Commission (herein called the "Public Body") and the United States of America (herein called the "Government"),

WITNESSETH:

In consideration of the mutual covenants, promises, and representations contained herein, the parties hereto do agree as follows:

SEC. 1. PURPOSE OF CONTRACT

The purpose of this Contract is to provide Federal financial assistance to the Public Body in the form of a grant of Federal funds (herein called the "Grant") under Title VII of the Housing Act of 1961, as amended, for the purpose of carrying out a certain open-space land project (herein called the "Project") and to state the terms and conditions under which such assistance will be extended.

SEC. 2. THE PROJECT

(a) The Public Body agrees to undertake, carry out, and complete the acquisition of fee simple in that certain land located in the City of Columbia, County of Richland, State of South Carolina, and more generally described as shown on the Exhibit A attached hereto and made a part hereof by reference.

(b) The Public Body agrees to retain said land, as developed, for permanent open-space purposes, and the open-space use or uses of said land shall be for park and recreational purposes, conservation of land and other natural resources, or historic or scenic purposes.

SEC. 3. THE GRANT

In order to assist the Public Body in carrying out the Project, the Government agrees to make a Grant in an amount equal to 50 percent of the actual cost of the Project, or in the amount of $430,893.00, whichever is less.

SEC. 4. RELOCATION GRANT

(a) The Government further agrees to increase the Grant otherwise payable to the Public Body pursuant to the provisions of Section 3 hereof in an amount equal to the relocation payments which are made by the Public Body in connection with the Project, in accordance with regulations prescribed by the Secretary with respect thereto:

Provided, That the amount of such increase shall in no event exceed the sum of $19,100.00.

(b) The Public Body agrees to make relocation payments to or on behalf of eligible families, individuals, business concerns, and nonprofit organizations in accordance with and to the fullest extent permitted by the regulations prescribed by the Secretary and within the limitations of subsection (a) hereof.

(c) No part of the amount of the relocation payments provided for hereunder shall be included in computing the amount of the Grant otherwise payable to the Public Body pursuant to the provisions of Section 3 hereof.

SEC. 5. TIME OF PERFORMANCE

The Public Body agrees that it will complete the acquisition of the open-space within 6 months after the date of the contract.

SEC. 6. COUNTERPARTS OF THE CONTRACT

This Contract may be executed in two counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

SEC. 7. CHANGES APPLICABLE TO PART II HEREOF

The following change is hereby made in the attached Terms and Conditions designated Part II hereof:

Wherever there appears in the Terms and Conditions, Part II, of this Contract any reference to or any provision directed toward demolition and/or development activities on open-space land acquired as part of the Project authorized hereunder, such provision or reference shall be deemed to be surplusage, it being understood and agreed by and between the parties hereto that the purpose of this Contract is to provide for Federal grant to assist in the acquisition of land for open-space purposes.

SEC. 8. COMPENSATION TO GOVERNMENT FOR ITS AUDITS AND INSPECTIONS

The Public Body will compensate the Government for its inspections and audits, provided for in Section 103(B) of Part II of this Contract, a fixed fee in the amount of $4,785.00. The fixed fee shall be payable at the time the first requisition for a Grant Payment is approved by a deduction of the entire amount of the fixed fee from the first Grant Payment to the Public Body: *Provided,* That, in the event the Grant amount authorized under Section 3 hereof with respect to the actual cost of the Project is increased, the addtional fixed fee payable thereby shall be deducted from the next Grant Payment made to the Public Body.

IN WITNESS WHEREOF, the Public Body has caused this Contract to be duly executed in its behalf and its seal to be hereunto affixed and attested; and, thereafter, the Government has caused the same to be duly executed in its behalf this 26th day of May, 1969.

(Seal)

SOUTH CAROLINA TRICENTENNIAL COMMISSION

By JAMES M. BARNETT
(Signature)

James M. Barnett, *Executive Director*
(Type Name and Title)

Attest:

SARA C. MCMILLAN
(Signature)

Sara C. McMillan, *Notary Public*
(Type Name and Title)

UNITED STATES OF AMERICA
Secretary of Housing and Urban Development

By ROBERT J. INGRAM
Deputy Assistant Regional Administrator
for Metropolitan Development

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Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-

ANNIE MARY VERSONS
Appellant

versus

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION and DANIEL R. McLEOD as Attorney General of the State of South Carolina
Respondents

ON APPEAL FROM THE SUPREME COURT OF SOUTH CAROLINA

MOTION TO DISMISS APPEAL

Daniel R. McLeod
The Attorney General
of the State of South Carolina
Columbia, South Carolina

Augustus T. Graham
1836 Washington Street
Columbia, South Carolina
Counsel for Respondents

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

NO. 813

ANNIE MARY TIMMONS
Appellant

versus

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION and DANIEL R. McLEOD, as Attorney General of South Carolina
Respondents

ON APPEAL FROM THE SUPREME COURT OF SOUTH CAROLINA

MOTION TO DISMISS APPEAL

Respondents move to dismiss the appeal to the Supreme Court of the United States in the above-entitled matter on the grounds that (1) no federal question of substance is presented in the appeal and (2) the Opinion of the Supreme Court of South Carolina from which the appeal is taken disposed of all questions raised on non-federal grounds.

OPINION AND RECORD BELOW

The opinion of the Supreme Court of South Carolina is reported in full in Appellant's Appendix A.

In addition, Appellant has reproduced in her Appendix B certain letters and HUD regulations which were not intro-

duced in evidence in the injunctive proceedings or in the condemnation action and were not considered by the Court of Common Pleas for Richland County, South Carolina, or the Supreme Court of South Carolina in arriving at their opinions and judgment. The letters are in fact dated after the test proceedings in the state circuit court from which the appeal is taken had been concluded.

The only matttters which related to the HUD grants are set out in Respondents' Appendices 2 and 3 and Appellant's Appendix C.

JURISDICTION

Appellant has appealed solely from those parts of the South Carolina Supreme Court opinion upholding the validity of the proceedings and the constitutionality of the eminent domain statute. No federal questions were raised in the trial in the condemnation action as distinguished from the injunctive proceedings.

QUESTION PRESENTED

Respondents are not able, even in the light of Appellant's Statement and Reasons for Jurisdiction, to ascertain the federal question on which Appellant seeks to base her appeal.

In the record there was ample evidence of the public nature of the taking and the necessity for the taking; these are state questions in any event.

How the use of *federal* funds violates Appellant's "guaranteed constitutional rights" is not stated.

The fact that a mortgage covering the condemned property is held by a *federal* savings and loan association raises no federal question.

Appellant has propounded a compound question referring to federal funds and a mortgage of a federal association, but what federal right has been violated is not specified.

STATEMENT

South Carolina is celebrating its 300th anniversary in 1970; sites of historical significance in or near the State's three largest cities were selected for Tricentennial exposition.

The city block containing the historic Hampton-Preston mansion was designated by the South Carolina General Assembly as the Columbia exposition site. The three sites in Columbia, Charleston and Greenville are to become public parks after the Tricentennial celebration ends on June 30, 1971.

Six of the seven properties in the Columbia block were acquired by negotiation; the seventh owner, Annie Mary Timmons, refused an offer of $250,000 based on appraisals made by MAI appraisers. Miss Timmons demanded $2,500,000 for her property. The Housing and Urban Development Department (HUD), which was supplying participating federal funds for the purchase of the block under the Urban Open-Space Land program, approved the $250,000 figure as the basis for its matching grant.

Miss Timmons refused to negotiate for the purchase of her property except on her terms, and the institution of eminent domain proceedings became necessary in order to obtain the entire block which will be restored as a public garden park when the Tricentennial celebration is ended. The four-acre block was a formal garden when the large antebellum structure was occupied as a residence.

The power of eminent domain was given the Commission on May 13, 1969, and the condemnation action was filed on June 6, 1969, in the state court of general jurisdiction. Four days later Miss Timmons instituted separate injunctive proceedings in the same state court to test the validity of the condemnation action and the constitutionality of the eminent domain statute and procedure.

The opinion of the Supreme Court of South Carolina, adopting the circuit judge's order of September 19, 1969, sets out the status of the proceedings (Appellant's Appendix A, pages 3a-4a) and summarizes the testimony as

to public use, necessity and permanence. (Ibid, pages 4a-5a, 6a, 7a, 11a-12a). The Transcript of Record on the appeal to the South Carolina Supreme Court contains 67 pages of testimony relating to the public nature of the use, the necessity for the taking and the permanent public purpose to be served.

The issues in the suit which tested the validity of the proceedings were:

1. Necessity for the condemnation.
2. Permanence in the taking.
3. Public use of property.
4. Denial of due process and the equal protection of the laws.
5. Special legislation.
6. Defectiveness of the enactment.

The state circuit judge upheld the proceedings against all of these attacks and found the eminent domain statute and procedure constitutional. Appellant attempted delay at every stage of the proceedings, including an attempt a week before the scheduled trial date to remove the case to the federal courts. A Petition for a Writ of Certiorari on that aspect of the case was denied by this Court on October 12, 1970. (No. 518, October Term, 1970).

The jury trial, requested by Appellant, commenced on December 1 and consumed a full week. Appellant's buildings, which had been built as dormitories for a women's college 60 to 80 years ago, were inspected by the jury which found as just compensation for the taking the sum of $325,000, an award $75,000 higher than the HUD-approved figure for estimated compensation.

The state judge who presided over the trial denied Appellant's motion for a new trial on December 8. Judgment in accord with the jury's verdict was entered on December 12. An appeal was noted by Appellant's counsel, and a Transcript of Record which contained no testimony from the trial was agreed upon.

Both appeals—in the injunctive proceedings and in the condemnation action—were docketed with the Supreme

Court of South Carolina which directed that the two appeals be heard at its April, 1970, term. The opinion affirming the orders and judgment of the state trial court in both proceedings was issued on July 7, 1970. (Appellant's Appendix A.)

Petitions for rehearings were filed. The petition which related to the injunctive proceedings reiterated the grounds upon which that appeal had been based. In the other petition, signed by Appellant on her own behalf, Appellant stated *inter alia* that the provisions of the Housing and Urban Development Act and regulations thereunder must be complied with "in order to permit a taking", but there was no specification as to noncompliance. This position was novel at this point.

Both petitions were summarily denied on July 22, 1970, and Appellant noted her appeal to the Supreme Court of the United States on July 23, 1970. On August 10, 1970, Appellant applied to the Supreme Court of South Carolina for a stay of the proceedings; that application was denied on August 28. A motion for a stay dated September 4 was filed with the Supreme Court of United States; that motion was denied on September 24 by Chief Justice Burger.

On August 27, 1970, the state circuit judge issued an order vesting title to Appellant's land in The Tricentennial Commission and directing Appellant to surrender possession of the lands. The amount of the award, $325,000, was deposited in Court.

The Jurisdictional Statement dated October 7, 1970, has been filed with the Supreme Court of the United States, and Appellant also moved for reconsideration of her motion for a Stay. That was denied on October 19, 1970.

REASONS FOR DISMISSING THE APPEAL

Although Appellant's Jurisdictional Statement contains 15 references to United States Treasury or HUD funds, Appellant has not stated any federal question raised with reference to the use of these funds.

Appellant says that the use is "not authorized by the

United States Housing and Urban Development Act of 1965, as amended", but the use as a public park is specifically authorized by the Act in accordance with the contract set out in Appellant's Appendix C.

Funds appropriated in accord with the Open-Space Land, Urban Beautification, and Historic Preservation Act (42 U. S. C. 1500 et seq.) are involved in the acquisition of these lands, but no exceptions were made in the test case, at the hearing or on appeal in reference to these funds.

The Act provides for grants up to 50% of the cost of acquisition. The term "open-space uses" is defined in the Act as "use of open-space land for (a) park and recreational purposes, (b) conservation of land and other natural resources, or (c) historic or scenic purposes." The Act provides that lands acquired with such grants cannot be converted to other uses without the approval of the HUD Secretary, 42 U.S.C. 1500c. The contract with HUD employed the same language as the Act with reference to the use of the land. (Appendix C)

Appellant states that these lands "no doubt would be converted to other uses and purposes, not authorized by law and in violation of the Housing Act, supra, and regulations", but this conjecture on Appellant's part is in the face of the Open-Space Land Act, the contract for the grant of the HUD funds and the South Carolina statute which is complimentary to the HUD statute by providing that land acquired with HUD funds under the Open-Space Land Act "shall be turned over [by the Tricentennial Commission] to the State or such other governmental entity as the General Assembly may direct, to be preserved and used for park purposes." (See Defendant's Exhibit C, Respondents' Appendix 3, and Defendant's Exhibit D, Appellant's Appendix C.)

Appellant persists in the position that the HUD Act, regulations and contract have not been complied with; while that is not in issue on this appeal and was not passed on by the state circuit court or the state supreme court, the Tricentennial Commission has in fact complied with all

requirements for negotiation for purchase and as to notice for surrender of possession.

Appellant refers to the HUD regulation and states that Judge Grimball's order of August 27, 1970, is "invalid and in noncompliance with the contract and regulations between HUD and the respondent."

This order was issued 50 days after the order from which the appeal to this court was taken was issued by the Supreme Court of South Carolina and more than a year after the hearing on the validity of the condemnation proceedings and the constitutionality of the eminent domain statute had been concluded.

Had the Appellant availed herself of the opportunity to appear before Judge Grimball on August 21, 1970, she would have heard proof of the 90-day notice which is in that record, but that is not an issue on this appeal because it was not involved in the proceedings on which this appeal is based and could not have been considered by the Supreme Court of South Carolina in the decision from which this Appeal has been taken.

The letters and HUD regulations reprinted in Appellant's Appendix B are not contained in the record forwarded by the Clerk of the Supreme Court of South Carolina. They were not introduced in either record and were not considered by the State circuit court or the Supreme Court of South Carolina on the appeals.

The only testimony and exhibits introduced in the record in regard to HUD funds related to the fact that the use of these funds required that the lands so acquired be used for open-space park purposes. (See Appendices C, 2 and 3).

As we construe Appellant's Jurisdictional Statement, any questions relating to the trial, the amount of the award and the admission of evidence have been abandoned. Appellant refers to her property as being worth $2,000,000, $2,500,000 and $3,000,000 and describes her buildings as "brick mansions" and as "valuable". Respondent's MAI appraisers ascribed no value to the improvements, and her own appraiser gave the structures a salvage value in adapting

the building for other uses. No appeal was taken from the amount of the award.

The appeal in the condemnation action was concerned with four questions, none of which is involved on this appeal:

(1) Continuance of the case;
(2) & (3) Admissions of evidence, and
(4) Denial of due process.

The first three questions were held to be matters properly within the discretion of the trial judge, and the South Carolina Supreme Court found nothing to show that that discretion has been abused. On the issue of due process the South Carolina court disposed of a contention that notice was required for an order setting a trial date and then stated:

> In a condemnation case the issues are simple. The court is in quest of the reasonable fair market value of the property taken. There is nothing in the transcript before us to convince us that ample opportunity to explore that issue was not afforded the landowner.

This is the only possible federal question raised in the condemnation proceeding and the repeated and restated proposition that Appellant has been denied due process of law will not raise a federal question where there is no specification as to the nature of the question.

Appellant avers that she has been "denied due process of law" and that "there has been no complete and fair trial by due process of law, no determination of the issues —" She says that she has been denied "the opportunity to be heard" and she conjectures that her properties "no doubt would be converted to other uses and purposes, not authorized by law—" She describes the taking as being "without due process and just and reasonable compensation for a temporary state purpose and other diverted uses—"

All legal rights and constitutional privileges have been accorded Appellant, and she has not cited a single instance in which she has been denied a hearing. All issues have been determined against Appellant in the proceedings

in the South Carolina courts; and the statute granting the power of eminent domain is in no wise defective.

Questions relating to necessity, the public nature of the taking and the permanent status of the condemnation are all matters which were decided by the state circuit court and the state supreme court under state law.

Appellant claims that her lands are being taken "for supposedly public parking, or diverted uses", "for temporary use, nonpublic uses and without reasonable necessity", "for temporary public parking or otherwise" and "for a temporary state purpose and other diverted uses."

The permanent nature of the taking was considered by the state courts. The acquisition of the lands with participating HUD funds does not change the nature or character of the taking and the fact a federal grant is involved does not *ipso facto* raise federal questions.

The basis upon which jurisdiction is claimed by Appellant is contained in 28 USC 1257 (2) which says that decisions of the highest state court may be reviewed by the United States Supreme Court:

> (2) by appeal, where is drawn in question the validity of a statute of any state on the grounds of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

The only state statutes involved in these proceedings are (1) the statute giving the Tricentennial Commission the power of eminent domain (Appendix 3) and (2) The Public Works Eminent Domain Law, which is the procedure prescribed for eminent domain proceedings brought by the Tricentennial Commission. 25-101-25-140 S. C. Code 1962.

The Eminent Domain statute and the procedural act were both upheld by the state circuit court, and that opinion has been upheld by the highest state court.

Justice Holmes made this off-quoted observation in *Madisonville Traction Co. v. St. Bernard Mining Co.*, 196 U. S. 239, 257, 49 L. ed 462, 470, 25 S. Ct. 251:

> The fundamental fact is that eminent domain is a

prerogative of the State, which on the one hand may be exercised in any way that the State thinks fit, and on the other may not be exercised except by an authority which the State confers.

In *Louisiana Power v. City of Thibodaux*, 79 S. Ct. 1070, 360 U. S. 25, 3 L. ed 1058, this Court held that the question of the power of a city to condemn under a state statute should be resolved by the highest state court. The validity of the proceedings are to be determined by the applicable state law, and the federal courts will apply state law even in those cases removed to the federal courts under the diversity statute.

Even if the highest state court decides questions of state law erroneously (which is certainly not conceded), that does not confer jurisdiction on the Supreme Court of the United States. *Brinkeroff-Faris Trust & Savings Co. v. Hill*, 50 S. Ct. 451, 281 U. S. 673, 74 L. ed 1107. The statute must be repugnant to the United States Constitution, and the right to interpret state statutes is a function of the state courts. *Cramp v. Board of Public Instruction of Orange County, Florida*, 82 S. Ct. 275, 368 U. S. 278, 7 L. ed 2d 285.

The federal right which has been violated has not been cited, and the state certainly has the right to give its power of eminent domain "in any way that the State thinks fit."

The same arguments propounded in the Jurisdictional Statement have been set out to a considerable extent in a Petition for a Writ of Certiorari to the Fourth Circuit Court of Appeals (No. 518, October Term, 1970). That proceeding involved the sole question of the removal of the condemnation action to the federal courts, and these arguments have no more relevancy there than they do here.

The same matters were also presented in the motions for stay before the South Carolina Supreme Court and before this Court, which have been denied in both instances.

The Jurisdictional Statement of Appellant does not accord with the records in this matter; Appellant's present counsel was not involved in either of the proceedings

below or on the appeals to the State Supreme Court. Counsel for the Tricentennial Commission has not been able to determine the federal question which Appellant seeks to raise. Certainly nothing has been cited to show the nature of any federal question raised during the trial stage of the proceedings or on appeal, and the decision of the Supreme Court of South Carolina does not show where any federal right or protection has been denied Appellant.

The reasons for granting jurisdiction are, to borrow a phrase from Macbeth, "full of sound and fury, signifying nothing." Respondents have commented more than is probably necessary, but the Jurisdictional Statement was not intended to clarify and specify any issues; it was designed to confound and confuse.

The opinion from which an appeal to this Court is taken must set out the federal issue which is to be considered. But Appellant has ignored the opinion of the South Carolina Supreme Court as if it did not exist and has ventured into issues which have never been presented and in fact do not exist.

Throughout this proceeding Appellant has contended that the State did not have the power to take her lands; on this appeal she contends that she was not personally served, even though the state circuit judge found on the basis of testimony before him that service had been effected, and Appellant's statement avers that "There is diversity of citizenship" which is not a fact and which has no possible relevancy on this appeal.

Appellant concludes the Jurisdictional Statement with the assertion that "Respondent cites not one single case in point . . ."

Appellant has cited no cases "in point", and in all candor Respondents submit that Appellant has not set out any point which affords a basis for an appeal to the Supreme Court of the United States.

The only case which needs to be considered in this matter is the opinion of the Supreme Court of South Carolina issued on July 7, 1970; it disposes of all issues and raises no

issue for consideration on appeal to this Court.

Appellant has been accorded every constitutional right and guarantee to which she is entitled, and there are no federal questions for consideration by the Court on appeal.

CONCLUSION

No reason for granting jurisdiction in this appeal has been advanced by Appellant. No federal question of substance has been raised at any point in the proceedings.

From the outset Appellant has made it clear that she did not want to part with her property which she regarded as having a value many times higher than any appraisal on the same.

The appeal should be summarily dismissed since there is no basis for jurisdiction by the Supreme Court of the United States, all issues in the two proceedings having been determined by the South Carolina courts on non-federal grounds.

Respectfully submitted,

DANIEL R. MCLEOD
The Attorney General
of the State of South Carolina
Columbia, S. C.,
AUGUSTUS T. GRAYDON
1225 Washington Street
Columbia, S. C. 29201
Counsel for Respondents

Columbia, South Carolina
October 24, 1970.

Appendix 1

The following are excerpts from the Transcript of Record in the appeal of the injunctive proceedings showing the introduction in evidence of the various state statutes setting up and defining the powers of The South Carolina Tricentennial Commission; only the 1968 and 1969 acts were in issue and their texts are reproduced in Appendix 3.

* * *

By Counsel for the Tricentennial Commission (Pages 29-30, Transcript):

MR. GRAYDON: Judge, we are prepared to go forward and present our testimony but, first, we would like to introduce the various Statutes, which we think are in contest. First of all is Act No. 925 of 1956, which is the Statute creating the Tricentennial Commission.

(Photostat of Act No. 925 of 1956 received in evidence and marked Defendant's Exhibit "A". G.W.C. Jr.)

MR. GRAYDON: The second is No. 1141 of 1966, which is the Statute essentially deleting the provisions of the 1956 Statute and substituting certain provisions therefor.

(Photostat of Act No. 1141 of 1966 received in evidence and marked Defendant's Exhibit "B". G.W.C. Jr.)

MR. GRAYDON: The third is No. 1384, which is an Act of 1968, amending the prior Acts.

(Photostat of Act No. 1384 of 1968 received in evidence and marked Defendant's Exhibit "C". G.W.C. Jr.)

MR. GRAYDON: The fourth is Act No. R-293 of the 1969 Statutes, which is a joint-resolution which gave The Tricentennial Commission the power of eminent domain.

(Photostat of Act No. R-293 of 1969 received in evidence and marked Defendant's Exhibit "D". G.W.C. Jr.)

* * *

The texts of Exhibits C (1968) and D (1969) are contained in Appendix 3.

Appendix 2

Appellant has reproduced letters from HUD officials and HUD regulations which were not in the trial record in either proceeding or in the record on appeal. The following

are excerpts from the record on appeal which relate to HUD, except references to the fact that HUD funds are being used in the acquisitions and testimony which is repetitive of these excerpts:

* * *

Testimony of James M. Barnett, Executive Director of The South Carolina Tricentennial Commission (Pages 56-61, Transcript):

Direct examination by Counsel for The Tricentennial:

Q. In connection with the acquisition of properties for The Tricentennial, did you have charge of that?

A. Yes, sir.

Q. And I believe properties are being acquired in Charleston which are known as "Old Town"?

A. Yes, sir.

Q. And what is being acquired in Greenville?

A. There is a park being acquired in Greenville.

Q. And then the third acquisition was what?

A. That was in Columbia.

Q. And that is what?

A. That is the Hampton-Preston block.

Q. That is a four-acre block in Columbia?

A. A four-acre block, yes, sir.

Q. And that includes the property of Miss Timmons?

A. Yes, sir.

Q. Now, did you go to Atlanta and get a grant from HUD in connection with the acquisition of all of this property?

A. We applied to the Federal Government for assistance in purchasing all of these permanent parks, which would be a part of the legacy of the 300th Celebration.

Q. The 300th Anniversary Celebration?

A. Yes, sir.

Q. And was that true in all three instances?

A. That's true in all three instances.

Q. And on what basis is the Federal Government supplying the funds?

A. The Federal Government is supplying a percentage of the acquisition funds for the property.

Q. What percentage?

A. Fifty per cent.

Q. Now, in the case of Columbia, that would be what amount?

A. That would be approximately $430,000.00 to $450,000.00.

A. And that was based on acquisition funds of what amount?

A. That was based on appraisals.

Q. I see. How much was the State supplying?

A. The State would be supplying twenty-five per cent of the acquisition costs.

Q. I see and the Federal Government fifty per cent?

A. Yes, sir.

Q. And the remainder came from where?

A. From Local Governments, that is, the City of Columbia and the County of Richland.

Q. Did you acquire other funds from the State?

A. Yes. The State supplied the majority of the development funds for each property.

Q. Now, did you make a presentation at the time Mrs. Dreher was before the Legislature? Did you make a presentation as to the allocation of these funds?

A. I did, sir.

Q. Do you have a copy of that presentation?

A. Yes, sir.

Q. That shows that what funds were to be allocated to the Columbia project?

A. $600,000.00 was to be allocated to the Columbia project for land acquisition and $300,000.00 was to be allocated for development.

MR. GIBBES: Judge, we object to this line of questions. We are not concerned today with property values.

THE COURT: Well, I don't think the testimony is directed to property values. You have raised the question of the disposition of the property after the Tricentennial

Celebration. There is a Statutory amendment that affects the disposition of the property when they are assisted with funds of the Housing and Urban Development Department of the Federal Government. It says that, under those circumstances, the property must go to the State government. So I think that this testimony is proper. Go ahead, Mr. Graydon.

MR. GRAYDON: All right, sir. Now, that shows the allocation of $600,000.00 to the Columbia project for land acquisition?

THE WITNESS: Yes, sir.

Q. And $300,000.00 for development?

A. That's correct.

Q. And in addition to that, I believe, the City of Columbia and the County of Richland each contributed $150,000-.00, is that correct?

A. That's correct.

Q. Then the Federal Government's share, provided all of the properties were acquired is approximately $450,000.00?

A. Approximately.

Q. It's not exact because, I think, some of the funds are allocable to relocation and things of that nature?

A. That has to be determined later.

MR. GRAYDON: We would like to introduce that in evidence.

THE COURT: All right, sir.

(South Carolina Tricentennial Commission Request for Permanent Improvement Funds Received in Evidence and Marked Defendants' Exhibit "J". G.W.C.Jr.)

MR. GRAYDON: Now, Mr. Barnett, in addition to that, you actually obtained a grant from the Department of Housing and Urban Development?

THE WITNESS: Yes, sir.

Q. Do you have a copy of that grant?

A. I do.

(At this point Mr. Graydon hands document referred to Counsel for the Plaintiff.)

MR. GRAYDON: We offer this in evidence.

The Court: All right, sir, have it marked in evidence.

(Document Referred to Received in Evidence and Marked Defendants' Exhibit "K." G.W.C.,Jr.)

MR. GRAYDON: Now, Mr. Barnett, referring to Part I of this particular document, I call your attention to Section 2, Sub-Paragraph B, and ask that you read that into the record.

THE WITNESS: "The Public Body agrees—"

Q. What is the "Public Body" there?

A. That would be the State of South Carolina, represented by the agency, The Tricentennial Commission.

Q. All right, sir. Go ahead.

A. "—Agrees to retain said land, as developed, for permanent open-space purposes, and the open-space use or uses of said land shall be for park and recreational purposes, conservation of land and other natural resources, or historic or scenic purposes".

MR. GIBBES: Now, if Your Honor pleases, we would object to that and move that it be stricken from the record, if an agreement is entered into by the State Agency or commission, which is contrary to the State Statutes, and which the State or Commission would only be committed as to fifty per cent of its funds, and we would like that objection noted for the record.

THE COURT: You contend that the provision read into the record is contrary to some Statute?

MR. GIBBES: Yes, Your Honor. It's contrary to the Acts setting up the Commission and directing how funds will be spent under State law and, of course, our objection would run to this particular agreement. Our contention is that the Act, which Your Honor has before you, that the provisions of the Act are contrary to this agreement, and that the State law would be controlling rather than the terms of the agreement.

THE COURT: What particular Act are you referring to?

MR. GIBBES: Our reference, Your Honor, is to the provisions of Joint Resolution No. 1141.

MR. GRAYDON: Is that of 1968?

MR. GIBBES: Of 1966 as amended by, or as allegedly amended by No. 1384 of the Acts of 1968, April 26th, with particular reference to that part designated in the 1968 Act as "Section 1", which Mr. Morrisett has already quoted to the Court, and which I will publish again if the Court desires it. It simply says, by way of summary, that the property acquired with participating funds from the United States Department of Housing and Urban Development "shall be turned over to the State or such other Governmental entity as the General Assembly may direct". And then Section 5 follows, which shows, the amended version, which says: "All property acquired or held prior to the termination of the Commission shall be disposed of as it sees fit and any moneys remaining shall be deposited in the general fund of the State".

MR. GRAYDON: Of course, Your Honor, he hasn't read the last part there, which says it is to be preserved.

MR. GIBBES: I will be happy to read that, Your Honor, if Mr. Graydon will just let me.

THE COURT: Well, you read the first part. It says, "Provided, however", and so on that it "shall be turned over to the State—to be preserved and used for park purposes", and the provision read into the record says exactly that as I read it. Your objection is in the record.

* * *

THOMAS O. LAWTON, JR., chairman of The South Carolina Tricentennial Commission (Page 91, Transcript):

DIRECT EXAMINATION

By Counsel for The Tricentennial:

Q. Now, Mr. Lawton, are you familiar with the HUD grants under which these properties are being obtained?

A. Yes, sir, I am.

Q. Was a Statute enacted in 1968 in connection with those particular grants? I refer you to Exhibit "C".

A. Yes, sir.

Q. And does that direct the manner in which these

properties will be disposed of upon the termination of the Tricentennial year?

A. It does. This Act provides that any property which the Commission has acquired prior to the termination of the Commission would be disposed of as the Commission saw fit, and that any monies remaining would be deposited with the general funds of the State; provided, however, that any properties which were acquired with HUD grants would be turned over to the State of South Carolina—to the State or to such other Governmental entity as the General Assembly may direct, and on the further condition that they be preserved and used for park purposes.

Q. And you are acquiring these properties, that is, the Charleston properties, and the Columbia properties, and the Greenville properties, with a view of turning them over to the State at the end of the Tricentennial Celebration for park purposes?

A. That's correct.

Appendix 3

Statutes of 1968 and 1969 introduced in Record by The Tricentennial Commission

From pages 109-110, Transcript of Record:

DEFENDANT'S EXHIBIT C

(R1269, H2852)

No. 1384

An Act to Amend Act No. 925 of 1956, As Amended, Relating To The South Carolina Tricentennial Commission, So As To Further Provide For The Disposition Of Certain Property.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Disposition of property.—Act No. 925 of 1956 as last amended by Act No. 1141 of 1966 is further amended by adding at the end of Section 5 of

SECTION 1, the following: Provided, however, that all property acquired with participating funds from the United States Department of Housing and Urban Develop-

ment under Title VII of the Housing Act of 1961, as amended, shall be turned over to the State or such other governmental entity as the General Assembly may direct, to be preserved and used for park purposes."

Section 5 when amended shall read as follows:

"Section 5. All property acquired or held prior to the termination of the commission shall be disposed of as it sees fit and any monies remaining shall be deposited in the general funds of the State. Provided, however, that all property acquired with participating funds from the United States Department of Housing and Urban Development under Title VII of the Housing Act of 1961, as amended, shall be turned over to the State or such other governmental entity as the General Assembly may direct, to be preserved and used for park purposes."

SECTION 2. Time effective.—This act shall take effect upon approval by the Governor.

Approved the 26th day of April, 1968."

From pages 111-112, Transcript of Record:

DEFENDANT'S EXHIBIT D

(R293, S170)

A Joint Resolution To Amend Section 3 Of Joint Resolution No. 925 Of The Acts And Joint Resolutions Of South Carolina, 1956, As Amended By Joint Resolution No. 1141, of 1966 Relating To The Powers Of The South Carolina Tricentennial Commission, So As To Add The Power Of Eminent Domain.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 3 of Joint Resolution No. 925 of 1956, as amended, is further amended by changing the period at the end of item (8) to a comma and adding: "including the exercise of the power of eminent domain in the manner prescribed in Chapter 3, Title 25 of the 1962 Code; provided, that, notwithstanding the provisions of Section 25-128, if the petitioner should abandon the condemnation proceeding, the owner shall be entitled to re-

ceive from the petitioner his costs and expenses, including a reasonable allowance for attorneys' fees, incurred in the proceeding, and the amount of such costs and expenses shall constitute a lien for the payment thereof upon any award theretofore deposited in the proceeding by such authority. Provided, further, that the Attorney General shall be made a party to the condemnation proceedings."

The item when amended shall read as follows:

"(8) to do such other things as it deems necessary in order to carry out the provisions of this act, including the exercise of the power of eminent domain in the manner prescribed in Chapter 3, Title 25 of the 1962 Code; provided, that, notwithstanding the provisions of Section 25-128, if the petitioner should abandon the condemnation proceeding, the owner shall be entitled to receive from the petitioner his costs and expenses, including a reasonable allowance for attorneys' fees, incurred in the proceeding, and the amount of such costs and expenses shall constitute a lien for the payment thereof upon any award theretofore deposited in the proceeding by such authority. Provided, further, that the Attorney General shall be made a party to the condemnation proceedings."

SECTION 2. This act shall take effect upon approval by the Governor.

[Formalities omitted]

Approved the 13th day of May, 1969.

ROBERT E. MCNAIR,
Governor.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 813

ANNIE MARY TIMMONS, *Appellant*,

v.

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION AND DANIEL R. MCLEOD, as Attorney General of the State of South Carolina, *Appellees*.

On Appeal From the Supreme Court of South Carolina

BRIEF OPPOSING MOTION TO DISMISS

THE FEDERAL CONSTITUTIONAL QUESTIONS ARE SUBSTANTIAL.

Appellants contends, and appellees admit, that United States Treasury funds are used in payment for the condemnation properties, (Mot. Dism. p. 6) which appellant further contends, raises a federal question and violates her guaranteed constitutional rights, without due process.

Where the United States constitution is interpreted by this Honorable Court, relative to the claimed power by a State of eminent domain, pursuant to payments with United States Treasury funds, certain basic rules

of law are followed, and the constitution must be considered and respected, as superior to the State, whose legislative and Court opinions are limited and inferior, and this Court has jurisdiction of such federal issues. It is clear here that the Federal constitutional questions are substantial and moreover the cases cited by the appellees, in their motion to dismiss, (Mot. Dism. p. 9 & 10), even reinforces appellant's contention and supports the substantiality of the constitutional questions. Appellees cite no case which is relevant or pertinent to the issues before The Court and which is in support of its contention. Appellees do quote, out of context from a dissent by Justice Holmes, in a majority opinion by Justice Harlan in *Madisonville Traction Co.* 196 U.S. 239, 49 L. ed 462, 25 S. Ct. 251, (Mot. Dism. p. 10 & 11), which involves an appeal from the Circuit Court of the United States, for Western District of Kentucky, to review a decree enjoining a further prosecution in the County Court of Hopkins County, of a condemnation proceeding, and the removal of the case to a Federal Circuit Court for a diversity of citizenship and in a majority opinion by Justice Harlan, affirmed the decree of the Federal Circuit Court awarding the injunction. The Federal Court, would enforce the State law, unless the law authorized the appropriation of private property for purposes that were really not of a public nature, and jurisdiction of the United States rests here on federal agency funds, a federal issue, and diversity of citizenship, also of a citizen of a State, as the Supreme Law of the land's, judicial power. The majority opinion in *Madisonville, supra,* reinforces and supports appellant's position and certainly is not in point or authority for appellees' contention. For the same results, appellees cite *Louisiana Power* v. *City of Thibo-*

daux, 79 S. Ct. 1070, 360 U.S. 25, 3 L. ed. 1058, (Mot. Dism. p. 10), a case involving questions of Stay Order, discretion, and justification for federal jurisdiction, in eminent domain proceedings. This Court's attention is respectfully invited to the separate opinion by Justice Brennan, Chief Justice Warren and Justice Douglas in support of the appellant's position, when questions of State law are not cloudy, a Federal District Court should decide them, even if such a course necessitates a decision of a federal constitutional issue. Likewise consider Justice Stewart, separate opinion, the cases are legion, since *Erie R. Co.* v. *Tompkins,* 304 U.S. 64, 82 Law. ed. 1188, 58 S. Ct. 817, in which the Federal Courts have adjudicated diversity cases by deciding issues of State Law, difficult and easy. And this Court has many times, often over dissents, urging abstention, decided doubtful questions of State Law, properly before us. Cases cited therein. Article 3 paragraph 3 Constitution of the United States. Appellant respectfully submits this case reinforces her position, and is contrary and inconsistent with appellees reasons for citation.

Again the appellees quotes out of context, and not the law of the case, in *Brinkeroff-Faris Trust & Savings Co.* v. *Hill,* 50 S. Ct. 451, 281 U.S. 673, 74 L. ed. 1107 (Mot. Dism. p. 10), in which Justice Brendeis' opinion supports and reinforces appellant's case on appeal for jurisdiction, the power of the Supreme Court of United States to review decisions of the state courts is limited to their decisions of Federal questions, * * * but State may not deprive a person of all existing remedies, for the enforcement of a right, which the state has no power to destroy without opportunity to protect it. Federal question raised in petition for rehearing in highest Court of State is raised in time.

Rule 16.1.(b) (Mot. Dism. p. 5) The appellant also raised her federal questions in the State Supreme Court. What Justice Brandeis did say in effect was, a violation of due process extends to State action through its judicial, as well as through its legislative, executive or administrative branch of government. And the violation is none the less clear when that result is accomplished by State judiciary in the course of construing an otherwise valid State statute. The Federal guaranty of due process extends to State Action in its judicial, and its legislative, to review federal questions. Appellant respectfully contends that this federal guaranty of due process, gives her jurisdiction in this Court to protect her personal and property rights, heretofore denied her, in lower state courts involving federal questions and federal funds. Moreover, the special class discriminatory act applied to the appellant exclusively, is today repugnant to the United States Constitution in this appeal, and this is one of many federal rights herein violated. Thus the case of *Cramp* v. *Board of Public Instructions of Orange County Florida,* 82 S. Ct. 275, 368 U.S. 278, 7 L. ed. 2nd 285, affords another illustration of appellees' citation of a case not in point but reinforces the appellant's appeal case. (Mot. Dism. p. 10) Justice Stewart in passing on an appeal involving a Florida statute requiring teachers to take an oath not to aid or support the communist party, etc. was attacked by a teacher as being unconstitutional, but Circuit Court of Orange County, held statute valid and prayer for injunction was denied by the Supreme Court of Florida. The case was appealed to this Court and in an unanimous opinion by Justice Stewart, it was held (1) teacher could execute oath without fear of perjury, but teacher could attack the statute in State Court and in United States Supreme Court and (2)

statute was unconstitutional and in violation of and denial of due process of law.

Also, in addition, it was discriminatory, repugnant, to guaranty of liberty and the 14th amendment. Also see Fifth amendment, which applies to and supports the appellant's appeal. The Federal Courts protect State and Federal employees and its citizens, in case of a discriminatory state statute, and the *Cramp* case, supra, was thus reversed by the Supreme Court of the United States, and the Florida Statute held unconstitutional, and this Court had jurisdiction on appeal.

The appellees again with misapplication refers to the appellant's petition for a writ of certiorari to the Fourth Circuit Court of appeals, No. 518, which involved, as appellees stated only the question of removal to the federal courts, but the appellant's petition there was not timely and the jurisdictional procedures were not complied with under the federal statutes involved, and the appellant's present counsel on appeal here, was not of record in those state or district court proceedings. Certainly the record on appeal proves this appeal, an entirely different case as stated in the Jurisdictional Statement before this Court at present. (Mot. Dism. p. 10). Moreover the arguments and federal constitutional questions presented on appeal proves appellant is entitled to jurisdiction and a hearing by this court on the merits of the case. What could present more of a federal question to this Court than United States Treasury money appropriated by The Congress to HUD, under contract with a State agency being disbursed in noncompliance and violation of said contract, in taking of appellant's properties, without due process, involving substantial federal ques-

tions, no permanent or public use of appellant's properties as condemned, during 1970 the expiration date of the Celebration? Federal money, what could be more of a federal question when diverted or used as appellees admits in this appeal? (Mit. Dism. 5 & 6)

Moreover, there is a diversity of citizenship, by the Appellant, the appellees, HUD officials of Atlanta, Ga. Washington, D. C. Secretary of HUD, and State of South Carolina, and SCT Commission an invalid creative involved State agency. Appendix C. Appellant's Jurisdictional statement. And appellees Motion to Dismiss.

By appellees admission, throughout its motion to dismiss, the Federal money from Washington, D. C. disbursed therefrom, and applied for by appellees, and to be used by appellees in this condemnation proceeding, without compliance, pursuant to the contract, is the very inception, and basis of the federal substantial constitutional question, which gives this Honorable Court jurisdiction on the merits for argument. Appellees Mot. Dism. and appellant juris. Statement.

Appellees in their motion to dismiss appeal, on pages 4, 7 and 12 thereof, refers to the appellant's property as, (1) buildings which had been built as dormitories for a women's college, and (2) that appellant did not want to part with her property, because of the low value placed thereon for condemnation purposes. Appellant contends that this is not altogether true, and only part of the facts, because the property she owns was until 1930 occupied by the Chicora College for Women, when it became merged with another presbyterian school, Queens College, at Charlotte, North Carolina. The property is within the same block area of,

Presbyterian Theological school, founded 1831 under the Presbyterian Synod of South Carolina and Georgia removed to Decatur, Georgia in 1925, where Woodrow Wilson, once a student, and where his father and uncle taught, he at that time was known as Tommy Wilson, after became President of the United States, President of Princeton University. The point is appellant contends, that she had consummated plans to place her property in trust with a commission to preserve forever in perpetuity and to restore to its original foundation and buildings and beauty and culture, all buildings intact as they are now, as a historical site and learning. For judicial notice and information of the Court, please note the accompanying photos of 3 of the 5 buildings, one of the auditorium of Chicaora College for women a presbyterian school until 1930 merger.

The value appellee guesses, on appeallant's properties (Mot. Dism. p. 7) is a gross misstatement of fact, obviously as the photos and buildings speak for itself, and because there has been no federal trial and determination where federal money is involved and where due process has been denied.

In reply to appellee's statement on pages 5 and 7 (Mot. Dism.) concerning the trial judge's orders of August 21 and 27, 1970, involving lack of service and notice, appellant had a stroke in July 4, 1970 and was later entered and under medical treatment in Winston Salem, N. C. at the Baptist Hospital there.

In this connection, the Court's attention is invited to the recent Order of the trial Judge, dated November 4, 1970, with Doctor's certificate of the Baptist Hospital of Winston Salem, N. C. attached thereto, which order among other things, confirms appellant absence

from South Carolina due to illiness and extends the sale of appellant's personal property to November 16, 1970. Appellant's Appendix A. Real property, building are intact.,

Appellant respectfully request that since her Jurisdictional Statement was filed with the Court on or about October 10, 1970, the appellees filed a Motion to Dismiss Appeal on or about October 28, 1970, and the Appellant now files her Brief in Opposition to Dismiss on or about November 12, 1970, and pursuant to the aforestated, that the Honorable Court now give further consideration and ask for a Stay to be issued, directed to the trial judge, of the Court of Common pleas for Richland County to enjoin the execution of the destruction of said buildings of appellant, pending the disposition of this appeal on its merits, and to consider and pass on the substantial federal questions involved with federal funds and the United States Constitution violations with denial of due process of law.

Pursuant to Rule 16 of this Court the appellant respectfully request that the Court enter an appropriate Order for Jurisdiction or in the alternate that, such Order note probable jurisdiction, or postpones consideration of the question of jurisdiction to the hearing of the case on the merits, and that the case stand for argument, until the truth and facts are determined by the Honorable Court.

CONCLUSION

The appellees has failed to cite any authority in point which disposes of the important and substantial federal constitutional question presented by this appeal, and supported by the appellant's jurisdictional statement.

The appellees motion to dismiss the appeal should be denied.

Respectfully submitted,

GERARD HARTZOG
714 Southern Building
Washington, D. C.
Counsel for Appellant

APPENDIX

APPENDIX

IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Docket No. 3642
Judgment Roll 74394

(1)

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION and DANIEL R. McLEOD, as Attorney General of the State of South Carolina, *Petitioners,*

vs.

ANNIE MARY TIMMONS and HOME FEDERAL SAVINGS AND LOAN ASSOCIATION, *Respondents,*

(2)

Docket No. 3650

ANNIE MARY TIMMONS, *Plaintiff,*

vs.

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION and DANIEL R. McLEOD, as Attorney General of the State of South Carolina, *Defendants.*

Order

A public auction sale of all personal property in premises at 1620 Laurel Street was directed by this Court on Monday, November 2, 1970. Title to the real estate in which the personalty was located was vested in The Tenth South Carolina Tricentennial Commission on August 27, and the former owner (Annie Mary Timmons) was given 30 days within which to surrender possession and remove all personal property from the five buildings located on the premises.

Miss Timmons, so the Court is advised, has not been available in Columbia since mid-August, but the order of August 27 was served by publication and was posted on the premises. That she had knowledge of the order is attested by the fact that her counsel referred to this order in a Jurisdictional Statement filed with the Supreme Court of The United States on October 7.

Miss Timmons has asked counsel for The Tricentennial Commission to delay the sale of the personal property of herself and her sister, Flora Timmons Henry Plumer, until November 15. I have read a medical report on Miss Timmons' physical condition and various telegrams sent by her counsel, Mrs. Plumer and Miss Timmons. Upon the motion of the attorney for The Tricentennial, I directed that the sale be delayed for a period of two weeks to permit the removal of all personal property of Miss Timmons and any and all other persons from said premises.

My order of August 27 gave Miss Timmons 30 days within which to surrender possession of the tract of land which had been acquired by The South Carolina Tricentennial Commission under eminent domain proceedings. This was the maximum period prescribed by the statutory procedure. When it developed that none of the furnishings and personalty had been removed from the buildings during said period the Commission's counsel concluded that the storage of these furnishings as allowed in my order would have been uneconomic.

Thereafter I issued the order directing the sale of personalty not removed from the premises on November 2. The Court is advised that all tenants have vacated the premises and presumably removed their personal property therefrom.

The Tricentennial Commission had no control of the premises during the 30-day period for surrender of the same, and the buildings are still intact. The security of

this property is not now and has never been the responsibility of The Tricentennial Commission.

Upon the motion of the attorney for the Commission acting upon the requests of Miss Timmons, her counsel and her sister and a letter from her physician (all of which are attached to this order for the record in this matter),

IT IS ORDERED:

1. That the sale of personal property in the buildings at 1620 Laurel Street previously set by order of October 3 is delayed from Monday, November 2, at 11 a.m. to Monday, November 16, at 11 a.m. at said premises under the terms of my prior order and the Notice of Sale which has been published in the State on October 14, 21 and 28, 1970; affidavit as to which is attached.

2. That no further advertisement of said sale is necessary or required.

3. That Annie Mary Timmons, Flora Timmons Henry Plumer, all persons acting under them and all persons having property at said premises are given the period until Sunday, November 15 to remove any and all furnishings and personal property from said premises. All property not removed shall be considered as having been abandoned and forfeited.

4. That all such personal property as remains in said buildings be sold at public auction at said premises on Monday, November 16, at 11 a.m.

JOHN GIMBALL
John Grimball, *Resident Judge*
Fifth Judicial Circuit

Columbia, South Carolina
November 3rd, 1970.

NORTH CAROLINA BAPTIST HOSPITALS, INC.
WINSTON-SALEM, NORTH CAROLINA 27103

Phone 725-7251

October 20, 1970

Mr. Gerard Hartzog
Attorney and Counselor at Law
714 Southern Building
Washington, D. C.

Re: Annie Mae Timmons
Hospital No 51 63 20

Dear Mr. Hartzog:

The above captioned patient was seen in the General Medical Clinic of the North Carolina Baptist Hospital on October 16, 1970, on a follow-up visit. The patient was first seen in the clinic on October 9, 1970, at which time she underwent a complete history and physical examination.

It was the examining physician's impression that the patient had hypertension of undetermined etiology, and appropriate studies were ordered to determine the cause. The possibility of hypertensive encephalopathy, transient ischemic attacks (cerebrovascular accident), labrinthitis was raised. It was also felt that the patient suffers from generalized, moderately severe atherosclerotic vascular disease, chronic bronchitis, and hiatal hernia.

She was also seen in the Emergency Room of this institution on 9/17/70, complaining of dizziness. It was the examining physician's impression that the patient was having symptoms secondary to hypertension, and Phenobarbital was prescribed. Arrangements were made at that time for the patient to be further evaluated in the clinic.

At the present time she is undergoing a diagnostic work-up to ascertain the possible cause of her elevated blood pressure.

Because of the patient's symptoms of dizziness and headache, it is my professional opinion that this patient is not medically capable of undergoing a stressful proceeding.

Very sincerely yours,

AMON L. FUNDERBURK
Amon L. Funderburk, M.D.
Resident in Internal Medicine
North Carolina Baptist Hospital

ALF:ab

SUPREME COURT, U. S.
FILED
FEB 3 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 813

ANNIE MARY TIMMONS, *Appellant*,

v.

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION AND DANIEL R. McLEOD, as Attorney General of the State of South Carolina, *Appellees*.

On Appeal From the Supreme Court of South Carolina

PETITION FOR APPELLANT FOR REHEARING

GERARD HARTZOG
714 Southern Building
Washington, D. C.

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 813

ANNIE MARY TIMMONS, *Appellant,*

v.

THE SOUTH CAROLINA TRICENTENNIAL COMMISSION AND DANIEL R. McLEOD, as Attorney General of the State of South Carolina, *Appellees.*

On Appeal From the Supreme Court of South Carolina

PETITION FOR APPELLANT FOR REHEARING

Comes now the appellant and petitions this Honorable Court pursuant to Rule 58 of the Rules of this Court, for a rehearing in the above entitled case, the Order in which case was filed on January 11, 1971. In support of this petition, the appellant states the following grounds:

The appellant respectfully request the Court, to reconsider the reasons for jurisdiction, stated in the Jurisdictional Statement starting on page 5 to 12 inclusive, filed with the Court on October 7, 1970. This argument briefly and distinctly, states the grounds, that the Federal Constitutional questions are substantial by use of federal funds, pursuant to Amendment V., Article 111., Sections 1 and 2., of the United States Constitution. In support of this argument and proof of non-compliance, with the Congressional Acts, which provided the federal funds, and the HUD regulations promulgated thereunder, the Court's attention is invited to pages 29a to 36a inclusive of the APPENDIX, and specifically "Compensation Condemnees" and APPENDIX C-CONTRACT, which alone, compared to the facts of record, is proof of non-compliance, by use of federal funds, in violation of appellant's constitutional rights, without due process of law, and the taking of her private property, for alleged public use, without just, adequate and reasonable fair market value compensation, under the disguise of a federal token payment.

The power to tax, is the power to destroy, within or without, and equally true, to deprive appellant of her constitutional personal and property rights, without due process, without just compensation, by a token payment with federal funds, from Washington, is a violation and destruction of her freedom and all rights, the appellant respectfully contends, under the construction and interpretation of the V Amendment, Article 111, Section 1 and 2 of the United States Constitution.

The appellant respectfully resubmits, reemphasizes, and renews her reasons and grounds stated, in her

argument and brief, filed with the Court, on November 12, 1970, entitled The Federal Constitutional Questions are substantial, Both this Brief and the aforestated Jurisdictional Statement are incorporated in this petition by reference for the Court. The appellant urges that the reasons for jurisdiction, contained in 8 pages thereof, be reconsidered with the jurisdictional statement.

On January 13, 1971, counsel for the appellees, Mr. Graydon, addressed a letter to counsel for the appellant which was, pertinent and relevant to this petition for rehearing, in which he stated, 'the Supreme Court has dismissed the appeal and we are now going to proceed with the demolition of the buildings on the property.' * * * * * * * * * "Prior to the Supreme Court's dismissal of the appeal on Monday, I had taken the position that the Tricentennial would object to the disbursements of any funds since there was an appeal pending in the Court but this, of course, is no longer the case and I see no reason why the proceedings should not go ahead and the funds disbursed to those legally entitled to the same."

It is respectfully submitted to this Court, that upon information and belief, it appears that with respect to the first statement, that no demolition of the buildings would proceed, pending the appeal and final and ultimate adjudication by the Court, is incorrect, because demolition has proceeded in and outside of said building and the counsel for the appellees as well as this Court was notified by telegram on January 20th, 1971, copy of which is reproduced verbatim following, that this petition for rehearing was being filed with this Court, pursuant to the Rules, which kept the appeal alive, open and on the docket, and no man-

date had been issued by this Court at that time, and under these circumstances the Clerk was requested to retain the Record in the Court. Of course no disbursements of any of the funds are imminent within the near future, nor could any funds be disbursed without extended hearings before the trial Judge and pursuant to his Orders as recorded in each case, as previously Ordered.

As above stated the following telegram was sent on January 20, 1971 to Augustus T. Graydon, Esquire, counsel for appellees, Honorable Daniel R. McLeod, as Attorney General for South Carolina, and The Clerk of The Supreme Court of the United States.

Washington, D. C.

Re: Timmons v. S.C. Tri-C et al
#813 Sup. Ct. of U.S.

This acknowledges and reaffirms the statement of your position and appellant's understanding by your letter of January 13, 1971, pursuant to court order's that no disbursement of any funds or demolition of any of the properties would proceed pending ultimate disposal of the appeal in the above case, and to advise again that pursuant to Rule 58 a petition for rehearing by appellant is being filed with the Clerk of the Supreme Court of the U.S. which keeps the appeal open and alive on the docket pending ultimate disposal by the Court.

Regards,

Gerard Hartzog
714 Southern Building
Washington, D. C.

In view of the foregoing, the appellant respectfully request a rehearing pursuant to Rule 58, or otherwise, or any of the Rules of this Court, applicable hereto, and that this Honorable Court enter an appropriate Order for Jurisdiction or note probable jurisdiction for a hearing ultimately on the merits of this case.

Respectfully submitted

GERARD HARTZOG
714 Southern Building
Washington, D. C.

CERTIFICATE OF COUNSEL.

The undersigned counsel for the appellant, hereby certifies that the foregoing petition is filed in good faith and not for purpose of delay; and that the petition is restricted to the grounds above specified.

GERARD HARTZOG
Counsel for appelant.